

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUR-2026-00050

**For approval and certification of electric
transmission facilities:
Charlottesville-Gordonsville
230 kV Rebuild Project**

HEARING EXAMINER'S RULING

October 2, 2026

On April 23, 2026, Virginia Electric and Power Company ("Dominion" or "Company") filed with the State Corporation Commission ("Commission") an application ("Application") for approval and certification of electric transmission facilities in the City of Charlottesville and Albemarle County, Virginia ("Project" or "Rebuild Project").¹

On June 2, 2026, the Commission entered an Order for Notice and Comment, which docketed the Application; directed Dominion to provide notice of its Application; provided any interested persons an opportunity to file comments or request a hearing on the Company's Application; and directed the Commission's Staff ("Staff") to investigate the Application and file a report containing Staff's findings and recommendations. The Order for Notice and Comment also, among other things, appointed a Hearing Examiner to rule on any discovery matters that arise in this proceeding.

On July 1, 2026, the Commission issued an Order, which found that a hearing should be held on the Application, among other procedural directives. The Order also broadened the Hearing Examiner's assignment, to conduct all further proceedings, and file a final report containing the Hearing Examiner's findings and recommendations.

On September 1, 2026, respondents that collectively refer to themselves as the Historic Keswick Properties ("Keswick Respondents") filed a Motion to Compel.² In their Motion to Compel, the Keswick Respondents requested a Ruling:³

(1) directing the Company to serve full and complete answers to Question Nos. 17, 18, 19, and 20 of the Second Set within ten days of such ruling; and

(2) directing the Company to produce all documents responsive to Question Nos. 23 and 24 of the Second Set, without limitation to the parcels owned by the Historic Keswick Properties, together with a privilege log identifying each document withheld on grounds of privilege or work product.

¹ This Ruling does not include a comprehensive summary of all filings, orders, and rulings in this case.

² For clarity, this Ruling refers to these parties – who are landowning individuals and entities – collectively as the Keswick Respondents and refers to their properties collectively as the Historic Keswick Properties.

³ Motion to Compel at 9.

On September 3, 2026, a Hearing Examiner's Ruling established an expedited pleading cycle for the Motion to Compel.

On September 9, 2026, Dominion filed its Response. In its Response, Dominion requested a Ruling:⁴

- (1) denying the Motion to Compel as untimely;
- (2) alternatively, sustaining the Company's objections to Questions 17-20 on the merits because they presuppose unmade contentions, seek legal conclusions, and are not relevant or proportional; and
- (3) sustaining the Company's objections to Questions 23 and 24 on the merits because they seek overbroad and disproportionate corridor-wide production concerning private easement rights not the subject of this proceeding and protected legal materials.

On September 14, 2026, the Keswick Respondents filed their Reply.

TIMELINESS OF MOTION TO COMPEL

Dominion requested that the Motion to Compel be denied because it was not filed promptly, as required by Rule 260 of the Commission's Rules of Practice and Procedure ("Rules of Practice").⁵ The Keswick Respondents argued that their Motion to Compel was promptly filed, asserting, among other things, that "[t]he standard is equitable and fact-specific, turning on the time constraints of the proceeding, the procedural schedule, the actual interval between objection and motion, and the other actions of the parties, including negotiation."⁶

The pleadings indicate the following timeline relevant to the Motion to Compel:⁷

July 2, 2026: Keswick Respondents' serve second set of discovery
 July 10, 2026: Dominion responds to second set of discovery
 July 17, 2026: Dominion supplements responses to Request Nos. 2-23 and 2-24
 August 17, 2026: Keswick Respondents request meet and confer
 August 24, 2026: Meet and confer between Dominion and Keswick Respondents
 Unspecified: Dominion provides second supplemental responses to unspecified requests
 September 1, 2026: Motion to Compel filed

Rule 260 provides that the Commission will rule on a discovery objection challenged by a motion to compel that is "promptly made."⁸ Provisions of Rule 260 may be waived "[w]hen necessary to serve the ends of justice in a particular case."⁹

⁴ Dominion's Response at 15.

⁵ *Id.* at 3-5. Rule 260 is 5 VAC 5-20-260 of the Commission's Rules of Practice, 5 VAC 5-20-10 *et seq.*

⁶ Reply at 8 (referencing a Hearing Examiner's Ruling in Case Nos. PUE-2007-00031 and PUE-2007-00033).

⁷ Motion to Compel at attached Ex. A; Dominion's Response at 3-4; Reply at 8.

⁸ 5 VAC 5-20-260.

⁹ 5 VAC 5-20-10.

The pleadings indicate the Motion to Compel was not promptly filed. While negotiation between or among counsel is a best practice in this context and I appreciate that it occurred regarding Keswick Respondents' second set of discovery requests, one month passed between when Dominion provided supplemental discovery responses (July 17, 2026) and when the Keswick Respondents requested a meet and confer with Dominion (August 17, 2026). One month is an extended duration before initiating discovery negotiation in a case with a five-calendar-day turnaround for discovery. This period constitutes most of the 46 days between when Dominion provided supplemental responses to the subject requests and the filing of the Motion to Compel. This period also constitutes most of the 53 days between when Dominion initially responded to the subject requests and the filing of the Motion to Compel.

However, for each of the discovery requests/responses in dispute, the Analysis below considers whether it is necessary to waive Rule 260's timeliness requirement to serve the ends of justice in this case.

ANALYSIS OF DISPUTED REQUESTS AND RESPONSES

The discovery dispute is discussed below using the same groupings of discovery requests used by the Keswick Respondents' Reply. Within each of these two groups, the relevant information and positions are organized chronologically, followed by a ruling on each discovery request within the relevant group.

In evaluating each discovery request and its associated response(s), I have applied the Commission's discovery standard applicable to a regulatory proceeding such as the instant one. As stated in Rule 260 of the Commission's Rules of Practice:

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved.... It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.¹⁰

For purposes of the instant case and discovery dispute, the subject matter involved is Dominion's request for approval and certificates of public convenience and necessity ("CPCNs") under the Utility Facilities Act and Code of Virginia ("Code") § 56-46.1. Code § 56-265.2 A 1 of the Utility Facilities Act states in part as follows:

[I]t shall be unlawful for any public utility to construct, enlarge or acquire . . . any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege.

¹⁰ 5 VAC 5-20-260.

Code § 56-46.1 A states in part as follows:

Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact In every proceeding under this subsection, the Commission shall receive and [consider] all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth . . . and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

Code § 56-46.1 B further provides, in part, that:

As a condition to approval the Commission shall determine that the line is needed and that the corridor or route chosen for the line will avoid or reasonably minimize adverse impact to the greatest extent reasonably practicable on the scenic assets, historic and cultural resources recorded with [DHR], cultural resources identified by federally recognized Tribal Nations in the Commonwealth, and environment of the area concerned In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation Additionally, the Commission shall consider, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line.

In addition, the Code requires consideration of existing right-of-way when siting transmission lines. Code § 56-46.1 C provides that "[i]n any hearing, the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company." Code § 56-259 C also provides that "[p]rior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way."

REQUEST NOS. 2-17, 2-18, AND 2-19**Keswick Respondents' Discovery Request No. 2-17:¹¹**

If Dominion contends that the historic, scenic, environmental, or cultural attributes of the properties affected by the Project has changed since the Commission's ruling in Application of Virginia Electric and Power Company Application No. 99, Case No. PUE-800006 (Mar. 30, 1981) ["the 1981 Proceeding"], please describe in detail what has changed and describe in detail all facts supporting that contention.

Dominion's Discovery Response to Request No. 2-17:¹²

The Company objects to this Interrogatory on the following grounds:

First, the Interrogatory is improper in form because it presupposes a contention that the Company has not made. The Company's Application in Case No. PUR-2026-00050 stands on its own merits under ... Code §§ 56-46.1 and 56-265.2 and is not predicated upon, and does not require, any comparison to the factual record or findings of the Commission in [the 1981 Proceeding]. The Commission's evaluation of the current Application is governed by the evidence submitted in this proceeding and the statutory criteria applicable thereto, not by reference to the record of a prior, separate proceeding.

Second, the Interrogatory improperly seeks a legal conclusion. Whether and to what extent the Commission's 1981 determination in [the 1981 Proceeding] has any legal relevance, precedential effect, or evidentiary bearing on the current proceeding is a question of law, not a factual contention susceptible to an interrogatory response. The Supreme Court of Virginia has held that the denial of a prior application does not bar consideration of a subsequent application where the issues are not identical. *See Graham v. Virginia Elec. & Power Co.*, 230 Va. 273, 277-78 (1985) ["*Graham*"].

Third, the Interrogatory is vague, ambiguous, and unduly burdensome insofar as it asks the Company to "describe in detail" purported changes to undefined "historic, scenic, environmental, or cultural attributes" across all "properties affected by the Project" over a period of more than forty-five years since the 1981 ruling. The scope of this request is limitless in both subject matter and temporal reach and is not proportional to the issues properly before the Commission in this proceeding.

Fourth, [the 1981 Proceeding] involved a materially different application – Application No. 99 – which proposed a double-circuit 230 kV line utilizing steel H-frame structures along the entire 54.1-mile Charlottesville-to-Remington corridor, whereas the current Application (Application No. 359) proposes the Rebuild Project along a shorter segment of the existing transmission corridor using monopole structures. The two proceedings involve different project scopes, different construction specifications, different route lengths, and different regulatory and reliability contexts, such that a premise requiring the

¹¹ Motion to Compel at Ex. A.

¹² *Id.*

Company to compare or reconcile its current Application against the factual record of a fundamentally different prior proceeding is neither appropriate nor productive.

Subject to and without waiving the foregoing objections, the Company states that it has not predicated its Application in Case No. PUR-2026-00050 upon a contention that the historic, scenic, environmental, or cultural attributes of the affected properties have or have not changed since the Commission's 1981 ruling in [the 1981 Proceeding]. The Company's Application addresses the scenic, environmental, historic, and cultural considerations applicable to the Rebuild Project on the basis of the current conditions and evidence presented therein, including the environmental assessment set forth in the Application's Appendix and the DEQ Supplement. To the extent the [Keswick Respondents] contend that the Commission's determination in [the 1981 Proceeding] establishes binding findings applicable to the current proceeding, the Company reserves its right to respond to any such contention at the appropriate time and in the appropriate procedural posture, including through testimony, briefing, or argument.

The Company expressly reserves all rights and objections, including the right to supplement or amend this response in accordance with applicable rules.

Keswick Respondents' Discovery Request No. 2-18:¹³

Describe in detail all facts supporting any contention that, notwithstanding the Commission's prior findings in [the 1981 Proceeding], circumstances today justify the Project as nonetheless being in the public interest.

Dominion's Discovery Response to Request No. 2-18:¹⁴

The Company objects to this Interrogatory on the following grounds:

First, the Interrogatory is improper in form because it presupposes a contention that the Company has not made. The Company's Application in Case No. PUR-2026-00050 stands on its own merits under ... Code §§ 56-46.1 and 56-265.2 and is not predicated upon, and does not require, any comparison to the factual record or findings of the Commission in [the 1981 Proceeding]. The Commission's evaluation of the current Application is governed by the evidence submitted in this proceeding and the statutory criteria applicable thereto, not by reference to the record of a prior, separate proceeding.

Second, the Interrogatory improperly seeks a legal conclusion. Whether and to what extent the Commission's 1981 determination in [the 1981 Proceeding] has any legal relevance, precedential effect, or evidentiary bearing on the current proceeding is a question of law, not a factual contention susceptible to an interrogatory response. The Supreme Court of Virginia has held that the denial of a prior application does not bar consideration of a subsequent application where the issues are not identical. *See Graham* ..., 230 Va. [at] 277-78....

¹³ *Id.*

¹⁴ *Id.*

Third, the Interrogatory is vague, ambiguous, and unduly burdensome insofar as it asks the Company to “describe in detail all facts” supporting a purported contention regarding changes in “circumstances” over a period of more than forty-five years since the 1981 ruling. The scope of this request is limitless in both subject matter and temporal reach and is not proportional to the issues properly before the Commission in this proceeding.

Fourth, [the 1981 Proceeding] involved a materially different application – Application No. 99 – which proposed a double-circuit 230 kV line utilizing steel H-frame structures along the entire 54.1-mile Charlottesville-to-Remington corridor, whereas the current Application (Application No. 359) proposes the Rebuild Project along a shorter segment of the existing transmission corridor using monopole structures. The two proceedings involve different project scopes, different construction specifications, different route lengths, and different regulatory and reliability contexts, such that a premise requiring the Company to compare or reconcile its current Application against the factual record of a fundamentally different prior proceeding is neither appropriate nor productive.

Subject to and without waiving the foregoing objections, the Company states that it has not predicated its Application in Case No. PUR-2026-00050 upon a contention that the Commission’s prior findings in [the 1981 Proceeding] must be overcome or distinguished. The Company’s Application demonstrates that the Rebuild Project is in the public interest based on the current conditions and evidence presented therein, including the reliability need, engineering basis, stakeholder engagement, and environmental analysis set forth in the Application’s Appendix and the DEQ Supplement. To the extent the [Keswick Respondents] contend that the Commission’s determination in [the 1981 Proceeding] establishes binding findings applicable to the current proceeding, the Company reserves its right to respond to any such contention at the appropriate time and in the appropriate procedural posture, including through testimony, briefing, or argument.

The Company expressly reserves all rights and objections, including the right to supplement or amend this response in accordance with applicable rules.

Keswick Respondents’ Discovery Request No. 2-19:¹⁵

Describe in detail all facts supporting any contention that, notwithstanding the Commission’s prior findings in [the 1981 Proceeding], circumstances today justify consideration of no alternatives to the Project given Dominion’s claim that the Project is entirely within existing rights of way.

Dominion’s Discovery Response to Request No. 2-19:¹⁶

The Company objects to this Interrogatory on the following grounds:

¹⁵ *Id.*

¹⁶ *Id.*

First, the Interrogatory is improper in form because it presupposes a contention that the Company has not made. The Company's Application in Case No. PUR-2026-00050 stands on its own merits under ... Code §§ 56-46.1 and 56-265.2 and is not predicated upon, and does not require, any comparison to the factual record or findings of the Commission in [the 1981 Proceeding]. The Commission's evaluation of the current Application is governed by the evidence submitted in this proceeding and the statutory criteria applicable thereto, not by reference to the record of a prior, separate proceeding.

Second, the Interrogatory improperly seeks a legal conclusion. Whether and to what extent the Commission's 1981 determination in [the 1981 Proceeding] has any legal relevance, precedential effect, or evidentiary bearing on the current proceeding is a question of law, not a factual contention susceptible to an interrogatory response. The Supreme Court of Virginia has held that the denial of a prior application does not bar consideration of a subsequent application where the issues are not identical. *See Graham* ..., 230 Va. [at] 277-78....

Third, the Interrogatory is vague, ambiguous, and unduly burdensome insofar as it asks the Company to "describe in detail all facts" supporting a purported contention regarding alternatives to the Rebuild Project over a period of more than forty-five years since the 1981 ruling. The scope of this request is limitless in both subject matter and temporal reach and is not proportional to the issues properly before the Commission in this proceeding.

Fourth, [the 1981 Proceeding] involved a materially different application – Application No. 99 – which proposed a double-circuit 230 kV line utilizing steel H-frame structures along the entire 54.1-mile Charlottesville-to-Remington corridor, whereas the current Application (Application No. 359) proposes the Rebuild Project along a shorter segment of the existing transmission corridor using monopole structures. The two proceedings involve different project scopes, different construction specifications, different route lengths, and different regulatory and reliability contexts, such that a premise requiring the Company to compare or reconcile its current Application against the factual record of a fundamentally different prior proceeding is neither appropriate nor productive.

Subject to and without waiving the foregoing objections, the Company states that it has not predicated its Application in Case No. PUR-2026-00050 upon a contention that the Commission's prior findings in [the 1981 Proceeding] must be overcome or distinguished. The Company's Application addresses the reasonableness of alternatives considered based on the current conditions and evidence presented therein, including the analysis set forth in the Application's Appendix. The Rebuild Project is proposed entirely within the existing transmission corridor, and the Company has demonstrated the reasonableness of the alternatives considered as required under current statutory criteria. To the extent the [Keswick Respondents] contend that the Commission's determination in [the 1981 Proceeding] establishes binding findings applicable to the current proceeding, the Company reserves its right to respond to any such contention at the appropriate time and in the appropriate procedural posture, including through testimony, briefing, or argument.

The Company expressly reserves all rights and objections, including the right to supplement or amend this response in accordance with applicable rules.

Keswick Respondents' Motion to Compel Regarding Request Nos. 2-17, 2-18, and 2-19:¹⁷

Question Nos. 17, 18, and 19 are standard contention interrogatories. They ask the Company to state whether it contends that circumstances have changed since the Commission's ruling in [the 1981 Proceeding] with respect to the historic, scenic, environmental, and cultural attributes of the affected properties (Question No. 17), the public interest (Question No. 18), and the propriety of considering no alternatives to the Project (Question No. 19) and, if so, to describe the facts supporting those contentions.

It is well established that a party may inquire into the factual and legal bases for an opposing party's positions. That is precisely the function contention interrogatories serve: they require parties to disclose the grounds of their positions, narrow the disputed issues, and prevent trial by ambush. A responding party cannot avoid them by recasting them as requests for "legal conclusions"; to the extent the questions call for the application of law to fact, that is exactly what a contention interrogatory permissibly does. *See* Va. Sup. Ct. R. 4:8(e).

Nor can the Company avoid these questions by disclaiming contentions it has not formally made. The Company's principal objection, that each interrogatory "presupposes a contention that the Company has not made", is not a basis to refuse an answer; it is the beginning of one. If the Company contends that circumstances have changed since the Commission's 1981 ruling, it must identify those changes and the supporting facts. If the Company contends that nothing has changed – or takes no position on the question – it should say so. Either way, an answer is required. A party propounding discovery is entitled to explore the nature of its opponent's position, including by positing positions the opponent may take and asking whether the opponent embraces or disclaims them. The Company cannot decline to answer merely because it would prefer to reserve the issue for "testimony, briefing, or argument" at a time of its choosing. Discovery exists so that the [Keswick Respondents] can learn the Company's positions now, while there is time to test them.

In addition, relevance is not fairly debatable. In [the 1981 Proceeding], the Commission rejected an application to construct a double circuit 230 kV line through this same corridor, citing the environmental, scenic, and historic resources impacted. Whether the attributes of the affected area, or the other circumstances the Commission found dispositive, have changed in the intervening years bears directly on the statutory factors the Commission must weigh under ... Code §§ 56-46.1 and 56-265.2 in this case. Indeed, the Company's own cited authority confirms the point: a prior denial does not bar a subsequent application "where the issues are not identical." *Graham ...*, 230 Va. [at] 277-78.... Whether and how the issues presented by this Application differ from those the Commission resolved in 1981 is an inherently factual comparison, and one the [Keswick Respondents] are entitled to explore in discovery.

¹⁷ *Id.* at 4-6 (paragraph numbers omitted).

The Company's remaining boilerplate objections fail as well. The interrogatories identify the specific attributes at issue, the specific properties affected by the Project, and a specific benchmark: the Commission's March 30, 1981 ruling.

Dominion's Responsive Pleading Regarding Request Nos. 2-17, 2-18, and 2-19:¹⁸

Question No. 17 asks for facts about changes in the affected properties' "historic, scenic, environmental, or cultural attributes" since the 1981 Proceeding, but only "if" the Company contends those attributes have changed. Questions 18 and 19 ask for facts supporting "any contention" that current circumstances justify the Rebuild Project notwithstanding the 1981 Proceeding or justify considering no alternatives. ... The Company has made none of those contentions. The Application stands on current evidence under ... Code §§ 56-46.1 and 56-265.2; it does not ask the Commission to revisit, overcome, or reconcile the 1981 Proceeding record. The civil authorities cited by the [Keswick Respondents] do not alter the threshold point: where a responding party (*i.e.*, the Company) disclaims the assumed contention (made by [the Keswick Respondents] in the noted questions), the disclaimer is the answer. Said differently, the mere posing of discovery questions premised on assumptions with no foundation in the record or the Company's Application does not somehow create a factual narrative for a contention the Company does not advance.

The Company gave that answer. It stated in its responses that it does not contend the affected properties' attributes have or have not changed since 1981. The Application neither states nor is predicated on changed (or unchanged) circumstances regarding the [Keswick Respondents'] properties.

Nothing in the Utilities Facilities Act or ... Code § 56-46.1 contains a requirement to plead or address prior statements or findings from a past Commission decision. Instead, consistent with the relevant statutes and Commission Staff Guidance regarding CPCN applications, the Application relies on current conditions and evidence, including the environmental assessment and DEQ Supplement. There is no missing factual answer to compel. The [Keswick Respondents] may make their own historical or preclusion arguments, or put on evidence regarding changed or unchanged circumstances, but they cannot require the Company to adopt those premises under the guise of compelling responses to assumption-laden discovery questions.

Even if the responses were insufficient, Questions 17-20 would fail the relevance requirement because they seek a comparison between the 1981 Proceeding and the current Application, not evidence the Company must provide to obtain a CPCN....

The governing statutes require a present regulatory determination. Under ... Code § 56-46.1(B), the Commission must determine whether the line is needed and whether the selected corridor or route will avoid or reasonably minimize adverse impacts on scenic, historic, and cultural resources and the environment. Under that statute, the Commission

¹⁸ Dominion's Response at 8-11 (emphasis in original pleading, footnote citations omitted).

also verifies loadflow modeling, contingency analyses, and reliability needs. ... Code § 56-265.2 requires a CPCN before construction or acquisition of covered facilities. Those provisions focus the inquiry on the current Application, current conditions, current reliability evidence, and the proposed method of installation – not on whether the Company can prove that private property attributes may have changed since 1981.

The Supreme Court’s decision in *Graham* ... forecloses treating the denial in the 1981 Proceeding as a preclusive or mandatory-comparability premise. *Graham* held that a later application (seeking approval to build the facilities in existence today) was not barred because the issues were not identical: the later proposal involved only part of the prior line, used different reconstruction specifications, and presented materially different environmental and scenic impacts. “[A] comparison of this record and the record of the previous case demonstrates conclusively that the two factual situations are quite different.”

Graham also answers the Motion’s “inherently factual comparison” argument. That two proceedings can be compared does not make the Company’s historical comparison a discovery obligation or a prerequisite to the Commission’s current analysis. The 1981 Proceeding concerned Application No. 99 – a double-circuit 230 kV line using steel H-frame structures along the 54.1-mile Charlottesville-to-Remington corridor. The current Application (like Application No. 126 at issue in *Graham*) concerns a much shorter, approximately 15.8-mile rebuild using double-circuit capable 230 kV monopoles within the existing maintained corridor and a different reliability and PJM planning context. The record already identifies those differences; the [Keswick Respondents] cannot compel the Company to convert them into a contention it has not made through discovery requests, or otherwise.

Keswick Respondents’ Reply Regarding Request Nos. 2-17, 2-18, and 2-19:¹⁹

Dominion treats the 1981 Proceeding as ancient history about a different project. It was neither. In 1981, the Commission rejected this Company’s proposal to construct a double circuit 230 kV line through this corridor, citing the environmental, scenic, and historic resources the line would affect. Today, the Company proposes what it describes as “double-circuit-capable 230 kV monopoles” carrying 8.4 miles of additional 230 kV conductor within the same corridor. The Commission must weigh the same statutory factors – need, alternatives, and the reasonable minimization of adverse impact on scenic assets, historic districts, and the environment – under ... Code §§ 56-46.1 and 56-265.2. Whether the resources the Commission found dispositive in 1981 persist today, and whether the Company contends they do not, bears directly on that inquiry.

Dominion’s principal argument is that “where a responding party disclaims the assumed contention, the disclaimer is the answer.” The [Keswick Respondents] agree that a party may answer a contention interrogatory by disclaiming the contention. Dominion did not do that. Each response states that the Company has not “predicated” its Application on the contention, then “reserves its right to respond to any such contention at the

¹⁹ Reply at 3-5 (internal citations omitted).

appropriate time and in the appropriate procedural posture, including through testimony, briefing, or argument.” That is not a disclaimer; it is a reservation of the right to make the contention later once discovery has closed. And the Response shows the reservation is not idle. Having told the Hearing Examiner it makes no contention regarding the 1981 Proceeding, Dominion devotes pages to suggesting that the 1981 project was “fundamentally different” – different structures, different length, “different regulatory and reliability contexts” – and that “[t]he record already identifies those differences.” Whether the circumstances the Commission found dispositive in 1981 are different today is precisely what Question Nos. 17, 18, and 19 ask. Dominion is making the contention now, on the strength of counsel’s characterization, while refusing to disclose the facts behind it.

The [Keswick Respondents] are content with either of two outcomes. Dominion may answer the questions: identify what, if anything, it contends has changed since March 30, 1981 with respect to the attributes of the affected properties, the public interest, the land rights Dominion holds, and the propriety of considering no alternatives, and state the facts on which it relies. Or Dominion may stand on its disclaimer, in which case the Hearing Examiner should hold the Company to it and preclude Dominion from offering evidence or argument at hearing, on rebuttal, or in briefing that circumstances have changed since the 1981 Proceeding or that the resources the Commission found dispositive then no longer warrant the same weight. What Dominion cannot do is say “no contention” in July and “changed circumstances” in December. Preventing exactly that is the function of a contention interrogatory.

Dominion’s remaining objections collapse under its own Response. Relevance is conceded: Dominion acknowledges that the [Keswick Respondents] “may make their own historical or preclusion arguments, or put on evidence regarding changed or unchanged circumstances.” Evidence a party may put on at hearing is relevant evidence, and discovery is how a party obtains it. Burden is refuted; if, as Dominion insists, “[t]he record already identifies those differences,” then stating them in response to an interrogatory imposes no burden at all; if it is unduly burdensome, the answer is not already in the record. And the “legal conclusion” objection fails because an interrogatory “is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact.” Va. Sup. Ct. R. 4:8(e). Dominion says the Commission’s rules control, but Rule 260 contains no exception for contention interrogatories, and Dominion cites no Commission authority recognizing one. *Brown v. Black*, 260 Va. 305 (2000), concerns dismissal as a discovery sanction absent an order compelling discovery, and *Reserve at Winchester II, LLC v. R 150 SPE, LLC*, 2022 WL 4594026 (W.D. Va. Sept. 28, 2022), is an unpublished decision that cites the federal counterpart to Rule 4:8(e). Neither addresses the adequacy of an answer.

Graham ... does not help Dominion either. *Graham* is a preclusion case, not a discovery case: the Court held that the Commission’s denial of an earlier application did not bar approval of a later one because the issues were not identical. The issue of preclusion is a red herring because the relevance of the issues applies regardless of whether Dominion is legally bound by the prior findings or not. More to the point, *Graham* reached its holding

by doing exactly what Dominion refuses to enable. The Court found the issues non-identical because “a comparison of this record and the record of the previous case demonstrates conclusively that the two factual situations are quite different,” identifying differing routes, construction techniques, and environmental impacts established by evidence. The comparison was record-based, not a matter of counsel’s say-so. Dominion invokes a holding that rests on comparing two records while objecting to the questions directed at building that comparison. And where the proposals in *Graham* were four years apart, these are forty-five. The passage of time is not a reason to forgo the inquiry; it is the reason the inquiry requires discovery from the party that holds the historical files.

Ruling on Request No. 2-17

The conditional clause of Request No. 2-17 makes clear that it seeks information “[i]f” Dominion contends that the historic, scenic, environmental, or cultural attributes of the properties affected by the Project have changed since 1981. In its response, the Company has made clear that its contentions regarding the environmental implications of the Rebuild Project are based on the current conditions and evidence presented in the Application package, including the associated attachments and direct testimonies. And the Motion to Compel does not identify any part of Dominion’s Application package in which Dominion has contended that the historic, scenic, environmental, or cultural attributes of the properties affected by the Project have, or have not, changed since 1981. As the Motion to Compel Dominion to respond further to Request No. 2-17 would be denied, I do not find waiver of Rule 260’s prompt filing requirement necessary to serve the ends of justice with respect to this request.

To be clear, this ruling is limited to the contention discovery and objections thereto. Consequently, this ruling does not prohibit the Keswick Respondents from potentially advancing, through evidence and/or argument, a comparative position like the discovery appears to suggest or from seeking proper discovery of information from Dominion that might advance such a position. Accordingly, I do not find it appropriate, at this juncture, to preclude Dominion “from offering evidence or argument at hearing, on rebuttal, or in briefing that circumstances have changed since the 1981 Proceeding or that the resources the Commission found dispositive then no longer warrant the same weight.”²⁰ If the Keswick Respondents pursue the position and theory this discovery request may suggest, Dominion would likely have the opportunity to respond through subsequent rebuttal testimony and/or argument. Any such rebuttal testimony would then be subject to the opportunity for discovery prior to the hearing, if timely served, and cross-examination.

Ruling on Request No. 2-18

For reasons similar to those discussed in the above Ruling on Request No. 2-17, the Motion to Compel Dominion to respond further to Request No. 2-18 would be denied. Dominion’s response makes clear that the Company’s contentions regarding the public interest implications of the Rebuild Project are based on the current conditions and evidence presented in the Application package, including the associated attachments and direct testimonies. As the Motion to Compel Dominion to respond further to Request No. 2-18 would be denied, I do not

²⁰ Reply at 4.

find waiver of Rule 260's prompt filing requirement necessary to serve the ends of justice with respect to this request.

Ruling on Request No. 2-19

While Request No. 2-19 also references the 1981 Proceeding, unlike Request Nos. 2-17 and 2-18, Request No. 2-19 does not ask Dominion to conduct a comparative analysis based on a contention that is not the Company's. To the contrary, Request No. 2-19 asks for all facts supporting Dominion's contention that circumstances today justify consideration of no alternatives to the Project. Dominion's Application indicates the Company did not consider any project alternatives or route alternatives, but did consider underground installation.²¹ If there are any other current circumstances beyond those identified in Dominion's Application and discovery response that the Company contends supports why it did not consider project or route alternatives to the Rebuild Project, I find that Dominion should provide those in response to Request No. 2-19. Accordingly, I find waiver of Rule 260's prompt filing requirement is necessary to serve the ends of justice with respect to this request and the objections to providing any such information are overruled.

REQUEST NOS. 2-20, 2-23, AND 2-24

Keswick Respondents' Discovery Request No. 2-20:²²

In [the 1981 Proceeding], Dominion acknowledged that it did not possess sufficient easement rights to construct the then-proposed double circuit 230-kV line:

The Company plans to use steel H-frame double circuit tangent structures with an average height of 90 feet along the same corridor. VEPCO feels it is important to obtain specific width easements of 100 feet all along the line, which would necessitate obtaining upgraded easements for 153 out of 174 parcels, either to widen those with specific width limitations or specify the width for those with mere center line easements. The structure-type limitations in some easements would also have to be removed.

On page 5 of Dominion's Application, ... Dominion contends that "no new right-of-way is necessary," and Appendix II.A.9 states that "the existing electric transmission corridor to be used for the Rebuild Project is adequate to construct the Rebuild Project." Please describe in detail the legal and factual basis for this change in position as between the prior project in [the 1981 Proceeding] and the current Project.

Dominion's Discovery Response to Request No. 2-20:²³

The Company objects to this Interrogatory on the following grounds:

²¹ See, e.g., Application, Appendix at ii, 30, 289.

²² Motion to Compel at Ex. A. At the time of the 1981 Proceeding, "VEPCO" was the acronym to which Virginia Electric and Power Company was more commonly referred.

²³ *Id.*

First, the Interrogatory is improper in form because it presupposes a contention that the Company has not made. The Company's Application in Case No. PUR-2026-00050 stands on its own merits under ... Code §§ 56-46.1 and 56-265.2 and is not predicated upon, and does not require, any comparison to the factual record or findings of the Commission in [the 1981 Proceeding]. The Commission's evaluation of the current Application is governed by the evidence submitted in this proceeding and the statutory criteria applicable thereto, not by reference to the record of a prior, separate proceeding.

Second, the Interrogatory improperly seeks a legal conclusion. Whether and to what extent the Commission's 1981 determination ... has any legal relevance, precedential effect, or evidentiary bearing on the current proceeding is a question of law, not a factual contention susceptible to an interrogatory response. The Supreme Court of Virginia has held that the denial of a prior application does not bar consideration of a subsequent application where the issues are not identical. *See Graham ...*, 230 Va. [at] 277-78....

Third, the Interrogatory is vague, ambiguous, and unduly burdensome insofar as it asks the Company to "describe in detail" the legal and factual basis for a purported "change in position" across a period of more than forty-five years since the 1981 ruling. The scope of this request is limitless in both subject matter and temporal reach and is not proportional to the issues properly before the Commission in this proceeding. Any comparison across a 45-year period would be inherently speculative given the passage of time and the limited record available from that proceeding.

Fourth, [the 1981 Proceeding] involved a materially different application – Application No. 99 – which proposed a double-circuit 230 kV line utilizing steel H-frame structures along the entire 54.1-mile Charlottesville-to-Remington corridor, whereas the current Application (Application No. 359) proposes the Rebuild Project along a shorter segment of the existing transmission corridor using monopole structures. The two proceedings involve different project scopes, different construction specifications, different route lengths, and different regulatory and reliability contexts, such that a premise requiring the Company to compare or reconcile its current Application against the factual record of a fundamentally different prior proceeding is neither appropriate nor productive.

Subject to and without waiving the foregoing objections, the Company states that it has not predicated its Application in Case No. PUR-2026-00050 upon a contention that the Commission's prior findings in [the 1981 Proceeding] must be overcome or distinguished. The Company's Application demonstrates that no new right-of-way is necessary for the Rebuild Project based on the current conditions, project design, and evidence presented therein. The Rebuild Project utilizes monopole structures within the existing transmission corridor, which differs materially from the 1981 proposal that required upgraded easements for steel H-frame double circuit structures. To the extent the [Keswick Respondents] contend that the Commission's determination in [the 1981 Proceeding] establishes binding findings applicable to the current proceeding, the Company reserves its right to respond to any such contention at the appropriate time and in the appropriate procedural posture, including through testimony, briefing, or argument.

The Company expressly reserves all rights and objections, including the right to supplement or amend this response in accordance with applicable rules.

Keswick Respondents' Discovery Request No. 2-23:²⁴

Please provide all communications with any other third party regarding the scope of existing rights of way for the Project, from 2020 to present.

Dominion's Discovery Response to Request No. 2-23:²⁵

The Company objects to this request as it is overly broad, making responding to this request unduly burdensome. Without waiving any objections, the Company is in the process of gathering its communications regarding the scope of its rights over the [Keswick Respondents'] properties and will supplement this response by July 17, 2026.

Dominion's Supplemental Discovery Response to Request No. 2-23:²⁶

Without waiving any objections, and subject to the limitations set forth above, the attorney-client privilege, work product doctrine, and any other applicable protections, the Company refers the [Keswick Respondents] to its Supplemental Response to Question No. 26. The Company's communications and internal analyses regarding the scope of its existing property rights and easements along the Project corridor necessarily implicate legal advice rendered by counsel in connection with pending litigation in the Circuit Court of Albemarle County, Case No. CL26-859 (the "Circuit Court Action"), as well as legal advice rendered in connection with this regulatory proceeding. The work product of counsel prepared in anticipation of, or in connection with, both the Circuit Court Action and this proceeding is likewise protected from disclosure.

To the extent non-privileged, responsive communications regarding the scope of existing rights of way for the Project as to the [Keswick Respondents] have been identified, those materials have been uploaded to the discovery eRoom. The Company reserves the right to supplement this response as additional documents are identified.

Keswick Respondents' Discovery Request No. 2-24:²⁷

Please provide all internal communications regarding the scope of existing rights of way for the Project, from 2020 to present.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Dominion's Discovery Response to Request No. 2-24:²⁸

The Company objects to this request as it is overly broad, making responding to this request unduly burdensome. The Company further objects because the scope of any existing property rights is not relevant to the Commission's evaluation of the Application. Without waiving any objections, the Company is in the process of gathering its communications regarding the scope of its rights over the Historic Keswick Properties and will supplement this response by July 17, 2026.

Dominion's Supplemental Discovery Response to Request No. 2-24:²⁹

Without waiving any objections, and subject to the limitations set forth above, the attorney-client privilege, work product doctrine, and any other applicable protections, the Company refers the [Keswick Respondents] to its Supplemental Response to Question No. 26. The Company's communications and internal analyses regarding the scope of its existing property rights and easements along the Project corridor necessarily implicate legal advice rendered by counsel in connection with pending litigation in the Circuit Court Action, as well as legal advice rendered in connection with this regulatory proceeding. The work product of counsel prepared in anticipation of, or in connection with, both the Circuit Court Action and this proceeding is likewise protected from disclosure. To the extent non-privileged, responsive documents concerning the existing rights of way for the Project as to the Historic Keswick Properties have been identified, those materials have been uploaded to the discovery eRoom. The Company reserves the right to supplement this response as additional documents are identified.

Keswick Respondents' Motion to Compel Regarding Request Nos. 2-20, 2-23, and 2-24:³⁰

Question No. 20 quotes the Company's own representation in [the 1981 Proceeding] that it did not possess sufficient easement rights to construct a double circuit 230 kV line in this corrido[r] and asks the Company to describe the legal and factual basis for its current, contrary position that "no new right-of-way is necessary" and that the existing corridor "is adequate to construct the Rebuild Project."

Question No. 20 addresses a representation the Company affirmatively made and on which the entire structure of the Application rests. Having placed the adequacy of its existing rights-of-way at the center of its case, and having relied on that premise to justify considering no route alternatives whatsoever, the Company cannot refuse to disclose the basis for the representation.

The Company's narrative response does not cure the deficiency. The Company observes that the Rebuild Project "utilizes monopole structures within the existing transmission corridor, which differs materially from the 1981 proposal." However, the question asks what legal rights and what facts support the Company's assertion that its existing

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 6-9 (paragraph numbers, internal citations, and headers omitted).

easements – the same instruments it told the Commission in 1981 were insufficient for a double circuit line – are adequate for the double circuit line it proposes today. The Company should be directed to answer it.

Question No. 23 seeks the Company's communications with third parties regarding the scope of existing rights-of-way for the Project, from 2020 to the present. Question No. 24 seeks the Company's internal communications on the same subject over the same period. The requests are tailored: they are limited to a single subject (the scope of the existing rights-of-way), a single project (the Project), and a defined period. They do not seek every communication touching the right-of-way.

The Company's unilateral narrowing is improper. Both the Company's original and supplemental responses recast the requests as seeking communications regarding the scope of the Company's rights over "the Historic Keswick Properties." But the Project is not limited to the Historic Keswick Properties, and neither is the request. The Project corridor extends approximately 15.8 miles through the City of Charlottesville and Albemarle County and crosses numerous parcels beyond those owned by the [Keswick Respondents]. How the Company assessed the scope of its easements corridor-wide bears directly on whether its representation that "no new right-of-way is necessary" is accurate; on whether the Project's design was driven by easement constraints (as the Company's own discovery responses suggest, see Response to Question No. 10 (describing the "constraints of the existing ROW" as driving structure selection)); and on the adequacy of the Company's alternatives analysis. The [Keswick Respondents] are aware of no doctrine that limits a respondent's discovery to evidence concerning its own parcels. Parties to a Commission proceeding are entitled to discovery of evidence relevant to the proceeding – regardless of who owns the land the evidence concerns.

In addition, the relevance objection is untenable. In response to Question No. 24, the Company asserts that "the scope of any existing property rights is not relevant to the Commission's evaluation of the Application." That position cannot be reconciled with the Application the Company filed. The Company affirmatively represents to the Commission that no new right-of-way is necessary, and it invokes the statutory preference for existing right-of-way to justify evaluating no route alternatives at all. The Company cannot premise its Application on an assertion about the scope of its property rights and simultaneously deny discovery into that assertion on the theory that property rights lie beyond the Commission's purview. If the scope of the Company's easements were truly irrelevant, so too would be the Company's representation – but the Company made the representation, repeated it in its public outreach, and asks the Commission to rely on it. The [Keswick Respondents] are entitled to test it.

Finally, communications with third parties are not ordinarily privileged, and disclosure to a third party generally waives any privilege that might otherwise attach. Nor does the pendency of litigation render every internal communication privileged or work product: the requests reach back to 2020 – years before this Application was filed or the Circuit Court Action commenced – and encompass ordinary-course business communications regarding the corridor. The Company's categorical invocation of privilege and work

product over its “communications and internal analyses,” unaccompanied by any privilege log, is improper and forecloses any evaluation of the claims. If the Company withholds any responsive document on privilege or work product grounds, it must identify each withheld document in a privilege log with sufficient detail to permit the [Keswick Respondents] and the Hearing Examiner to evaluate the claim.

Dominion’s Responsive Pleading on Request Nos. 2-20, 2-23, and 2-24:³¹

Question No. 20 quotes the Company’s statement in the 1981 Proceeding that the then-proposed, 54.1-mile-long steel H-frame double-circuit project would require upgraded easements for 153 of 174 parcels, and asks the Company to describe the legal and factual basis for a supposed change in position in its Application here to rebuild some 15.8 miles in the existing corridor. The Company has made none of those contentions. The Application stands on current evidence under ... Code §§ 56-46.1 and 56-265.2; it does not ask the Commission to revisit, overcome, or reconcile the 1981 Proceeding record. The civil authorities cited by the [Keswick Respondents] do not alter the threshold point: where a responding party (*i.e.*, the Company) disclaims the assumed contention (made by [the Keswick Respondents] in the noted questions), the disclaimer is the answer. Said differently, the mere posing of discovery questions premised on assumptions with no foundation in the record or the Company’s Application does not somehow create a factual narrative for a contention the Company does not advance.

The Company gave that answer. It stated in its responses that it does not contend the affected properties’ attributes have or have not changed since 1981. The Application neither states nor is predicated on changed (or unchanged) circumstances regarding the [Keswick Respondents’] properties. Nothing in the Utilities Facilities Act or ... Code § 56-46.1 contains a requirement to plead or address prior statements or findings from a past Commission decision. Instead, consistent with the relevant statutes and Commission Staff Guidance regarding CPCN applications, the Application relies on current conditions and evidence, including the environmental assessment and DEQ Supplement. There is no missing factual answer to compel. The [Keswick Respondents] may make their own historical or preclusion arguments, or put on evidence regarding changed or unchanged circumstances, but they cannot require the Company to adopt those premises under the guise of compelling responses to assumption-laden discovery questions.

Even if the responses were insufficient, Questions 17-20 would fail the relevance requirement because they seek a comparison between the 1981 Proceeding and the current Application, not evidence the Company must provide to obtain a CPCN. Question 20 also adds a separate legal-rights premise addressed further below.

The governing statutes require a present regulatory determination. Under ... Code § 56-46.1(B), the Commission must determine whether the line is needed and whether the selected corridor or route will avoid or reasonably minimize adverse impacts on scenic, historic, and cultural resources and the environment. Under that statute, the Commission also verifies loadflow modeling, contingency analyses, and reliability needs. ... Code

³¹ Dominion’s Response at 8-14 (footnotes and headings omitted).

§ 56-265.2 requires a CPCN before construction or acquisition of covered facilities. Those provisions focus the inquiry on the current Application, current conditions, current reliability evidence, and the proposed method of installation – not on whether the Company can prove that private property attributes may have changed since 1981.

The Supreme Court’s decision in *Graham* ... forecloses treating the denial in the 1981 Proceeding as a preclusive or mandatory-comparability premise. *Graham* held that a later application (seeking approval to build the facilities in existence today) was not barred because the issues were not identical: the later proposal involved only part of the prior line, used different reconstruction specifications, and presented materially different environmental and scenic impacts. “[A] comparison of this record and the record of the previous case demonstrates conclusively that the two factual situations are quite different.”

Graham also answers the Motion’s “inherently factual comparison” argument. That two proceedings can be compared does not make the Company’s historical comparison a discovery obligation or a prerequisite to the Commission’s current analysis. The 1981 Proceeding concerned Application No. 99 – a double-circuit 230 kV line using steel H-frame structures along the 54.1-mile Charlottesville-to-Remington corridor. The current Application (like Application No. 126 at issue in *Graham*) concerns a much shorter, approximately 15.8-mile rebuild using double-circuit capable 230 kV monopoles within the existing maintained corridor and a different reliability and PJM planning context. The record already identifies those differences; the [Keswick Respondents] cannot compel the Company to convert them into a contention it has not made through discovery requests, or otherwise.

The same reasoning independently defeats Question 20. Question 20 incorrectly posits a “change in position” by treating the Company’s statement in the 1981 Proceeding (concerning easement requirements for a steel H-frame double-circuit proposal) as if it addressed the current Rebuild Project. Of course, it did not; that statement preceded the development of the Rebuild Project by over 40 years. Among other things, the current Application concerns a different structure type, line design, project scope, and planning context. The Company’s response to Question 10 of the [Keswick Respondents’] Second Set – not at issue here – further explained that the current design has a standard 100-foot right-of-way requirement, but that an earlier 500/230 kV concept required a minimum width of 110 feet and a preferred width of 120 feet, which was enabled by PJM’s approval of the revised (current) design. The representation that no new right-of-way is necessary concerns the current design and corridor. Question 20 instead asks the Company to opine on the legal effect and scope of private easements (*i.e.*, take and make legal conclusions) while assuming the projects are the same. Question 20 should be denied.

Through Questions 23 and 24, [Keswick Respondents] seek a back-door way to obtain a ruling on private easement rights, which is not a question to be decided by this tribunal. They seek “all communications” with third parties and “all internal communications” regarding the scope of existing rights-of-way for the Rebuild Project from 2020 to the

present. That subject is central to the Circuit Court Action, where the [Keswick Respondents] seek a declaration concerning the scope of the Company's easements as to their properties. The parallel action does not make a six-year, corridor-wide communications request relevant or proportionate to this proceeding.

The Commission's task is to determine whether the Rebuild Project is needed, whether the proposed corridor and method of installation satisfy [Code] § 56-46.1, and whether the Company should receive a CPCN under ... Code § 56-265.2. It may consider the factual effects of using an existing corridor, and the Company has provided evidence on that subject. *Appalachian Power Co. v. John Stewart Walker, Inc.*, [214 Va. 524 (1974) ("John Stewart Walker")], however, makes clear that the Commission does not adjudicate private rights or contracts between a public service corporation and an individual. Section 56-49(2) addresses when a public service corporation may exercise eminent domain after obtaining any required certificate, and does not authorize the Commission to construe a private easement. The July 17, 2026, Ruling and the *Greenfields* ruling in 2010 applied the same distinction, and allowed CPCN proceedings to proceed while private easement disputes remained for circuit courts.

The Motion itself acknowledges that "[t]he scope of the Company's easement rights is the subject of the Circuit Court Action" and that it does not ask the Commission to adjudicate title. Yet Questions 23 and 24 seek communications on that exact subject. Discovery cannot bypass the jurisdictional line the [Keswick Respondents] themselves identify. The Company therefore properly objected that the scope of private property rights is not, by itself, relevant to the Commission's evaluation, while producing or making available non-privileged materials concerning the [Keswick Respondents'] properties.

...

The requests also sweep beyond any case-specific need. Question No. 23 seeks "all communications with any other third party"; Question No. 24 seeks "all internal communications"; both reach from 2020 to the present and cover the entire approximately 15.8-mile corridor. Neither identifies custodians, document categories, parcels, easement instruments, or a defined factual issue. As written, the requests reach any topic, for example, engineering, operations, real estate, public-outreach, regulatory, and litigation communications. A six-year search and review would be disproportionate to a discovery dispute concerning two representations the Company made in the Application (filed in 2026) – particularly where the [Keswick Respondents] are the only property owners to have questioned the Company's rights today along the entire corridor.

Commission precedent rejects this form of discovery. In the 2007 Case, the Hearing Examiner denied a motion to compel "any communications," even if potentially "relevant" to the proceeding, where the request was nevertheless overly broad. Questions 23 and 24 are broader still, demanding "all communications" across an entire corridor for six years without meaningful subject-matter or custodian limitations. The Company did not refuse to engage; it produced nonprivileged materials responsive to a reasonable, narrower, property-specific inquiry. The corridor-wide request should be denied.

...

The Company did not assert that every Rebuild Project communication is privileged. Its supplemental responses explained that communications and internal analyses concerning property rights and easements implicate legal advice, attorney-client communications, and work product in the Circuit Court Action and this proceeding, while identifying and making available the narrower non-privileged materials concerning the [Keswick Respondents'] specific properties. The objections are tied to defined categories of protected material, not a categorical assertion that all third-party or internal communications are immune. Given the breadth of Questions 23 and 24, the Company reasonably narrowed its search and production rather than undertaking a six-year, corridor-wide privilege review.

Keswick Respondents' Reply Regarding Request Nos. 2-20, 2-23, and 2-24:³²

Question Nos. 20, 23, and 24 concern a single subject: the basis for the Company's representation that "no new right-of-way is necessary," that the existing corridor "is adequate to construct the Rebuild Project," and that the Company therefore "did not consider any alternative routes." Dominion's objections to all three rest on the same proposition – that the scope of its easements is a question for the Circuit Court of Albemarle County and not for this Commission. The [Keswick Respondents] have never asked the Hearing Examiner to construe an easement. They ask only that the Company be required to disclose the basis for what it told this Commission. A party that makes a representation in its Application, and asks the Commission to rely on it to dispense with an alternatives analysis, cannot invoke the jurisdiction of a different tribunal to insulate that representation from discovery here.

Nor can Dominion maintain that the scope of its right-of-way is irrelevant. The Company put it at issue. It invokes the statutory preference for existing right-of-way; it states that the "constraints of the existing ROW" drove its structure selection; and it now discloses that an earlier 500/230 kV concept requiring 110 to 120 feet of right-of-way was replaced by a design with "a standard 100-foot right-of-way requirement." On Dominion's own telling, the Company measured the width of its existing easements against candidate designs and chose the one that fit. Dominion concedes that the Commission "may consider the factual effects of using an existing corridor," and its retreat to the position that property rights are "not, *by itself*, relevant," concedes that they are relevant in the context in which the Company has placed them. Neither [*John Stewart Walker*], which holds that the Commission does not adjudicate private contract rights, nor the July 17, 2026 Ruling, which held that the Commission need not await the Circuit Court before considering the merits, suggests that the Company's representations about its right-of-way are immune from testing on those merits. If the Commission is to evaluate the Application now, the parties must be able to test its premises now.

Question No. 20 asks a factual question that only Dominion can answer. In 1981, the Company told the Commission that a double circuit 230 kV line in this corridor required 100-foot easements, that it would need to upgrade its easements on 153 of 174 parcels to obtain them, and that structure-type limitations in certain easements would have to be

³² Reply at 5-8 (internal citations omitted, emphasis added by pleading).

removed. Today the Company proposes a double-circuit-capable 230 kV line with a 100-foot right-of-way requirement and tells the Commission that no new right-of-way is necessary. Either the Company has acquired rights since 1981 or it now reads the same instruments differently. Dominion's assertion that "[p]arties do not address legal questions in discovery," is offered without authority and is contrary to Rule 4:8(e). Question No. 20 should be answered.

Question Nos. 23 and 24 are appropriately tailored, and Dominion's unilateral narrowing of them is not. The requests are limited to one subject, one project, and a defined period. Dominion nevertheless confined its search and production to the [Keswick Respondents'] own parcels on the ground that they "are the only property owners to have questioned the Company's rights today along the entire corridor." That is a factual assertion about the very communications the requests seek, and the [Keswick Respondents] are entitled to test it rather than take counsel's word for it. It is also the reason a corridor-wide response matters. The representation that no new right-of-way is necessary is a representation about the entire 15.8-mile corridor, not about seven landowners' parcels. If the Company assessed only those parcels, its representation as to every other parcel rests on nothing that has been produced; if the Company assessed the corridor, the communications reflecting that assessment are responsive and have been withheld. Dominion identifies no actual burden. It states that it "reasonably narrowed its search ... rather than undertaking a six-year, corridor-wide" review – which is to say it did not search the corridor at all. Dominion's argument fails to establish any actual burden that is unreasonable.

Ruling on Request Nos. 2-20, 2-23, and 2-24

Request No. 2-20 requests a detailed description of the legal and factual basis for what the request characterizes as a change, since the 1981 Proceeding, in the Company's position regarding property rights along the route of the Rebuild Project. Request Nos. 2-23 and 2-24 seek all external and internal communications "regarding the scope of existing rights of way for the Project, from 2020 to present." While Dominion's discovery responses indicate that some documents have been produced, the Keswick Respondents argue that they must be allowed to seek further information to be used to challenge assertions in Dominion's Application regarding the extent of the Company's property rights.³³ As stated by the Keswick Respondents, their Motion to Compel seeks discovery "bearing on the accuracy and basis of" such representations.³⁴ However, as the Keswick Respondents have already correctly pointed out when arguing their Motion to Stay, circuit courts – not the Commission – have jurisdiction to adjudicate property right disputes in Virginia.³⁵ As such, the type of information and documents the Keswick Respondents seek to compel are to test assertions about something in dispute that cannot be

³³ See, e.g., Reply at 5-6 ("Question Nos. 20, 23, and 24 concern a single subject: the basis for the Company's representation that 'no new right-of-way is necessary,' that the existing corridor 'is adequate to construct the Rebuild Project,' and that the Company therefore 'did not consider any alternative routes.' ... [Keswick Respondents] have never asked the Hearing Examiner to construe an easement They ask only that the Company be required to disclose the basis for what it told this Commission.").

³⁴ Motion to Compel at 8, n.2.

³⁵ See July 17, 2026 Hearing Examiner's Ruling at 10, n.73 ("The Keswick Respondents and Dominion both recognize that the Commission lacks jurisdiction to adjudicate private easement rights.").

proven or disproven in this Commission proceeding. The Keswick Respondents are free to point out that assertions Dominion has made regarding the relevant property rights are disputed, and to continue to pursue legal action on that issue in circuit court, but that is not a legal dispute the Commission can or will resolve in the instant case. Potential evidence as to whether Dominion has the full extent of the property rights it claims to possess under the law – or, alternatively, whether it does not – therefore has no probative value in this Commission case. Consequently, waiver of Rule 260’s timeliness requirement to compel additional discovery going to that non-jurisdictional issue will not serve the Commission or “the ends of justice” in this particular case.

Accordingly, the Keswick Respondents’ Motion to Compel is ***GRANTED IN PART*** and ***DENIED IN PART***, as set forth herein, and the Petitioners are ***DIRECTED*** to provide a supplemental discovery response consistent with this Ruling within five (5) calendar days hereof.

/s/ Matt Roussy

D. Mathias Roussy, Jr.
Chief Hearing Examiner

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