



**Date of Council Meeting:** April 14, 2015

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

**Subject:** An encroachment agreement to allow a reclaimed water line to cross Dominion Virginia Power (DVP) easement along the W&OD Trail.

**Staff Contact:** Keith Wilson, Land Acquisition Manager, Capital Projects  
Barbara Notar, Town Attorney

**Staff Recommendation:** The Town Council should approve a resolution authorizing the Mayor to execute an encroachment agreement and any future extension agreements with DVP and GEP which will allow the purple line to cross DVP's easement under the W&OD Trail ("trail") near Sycolin Creek and the adjacent property owned by Luck Stone in Loudoun County.

**Commission Recommendation:** Not Applicable.

**Fiscal Impacts:** The processing and impact fee associated with this encroachment agreement has been paid by GEP.

**Executive Summary:** The encroachment agreement is needed by DVP to allow the purple line to cross the trail on which DVP has an easement. The purple line will be constructed by GEP and owned and operated by the Town.

**Background:** Town Council previously passed Resolution No. 2014-037 which authorized the Town to enter into a License Agreement between the Town, GEP and the NVRPA to allow for the construction, operation and maintenance of the purple line under a portion of the trail; and Resolution No. 2014-046 which authorized the execution of an encroachment agreement to allow the reclaimed water line ("purple line") to cross DVP's easement along the trail. The encroachment agreement specified that if the physical installation of the purple line did not begin within one (1) year of the date of the execution of the encroachment agreement, then the agreement becomes invalid. As the line has not yet been built, DVP requires a new agreement to allow the purple line to cross the W&OD Trail on its easement.

Attachment: Encroachment Agreement  
Proposed Resolution

Reference #: TE 014048001

## Consent Agreement for Right of Way Encroachment

VIRGINIA ELECTRIC AND POWER COMPANY ("**Company**") and PANDA STONEWALL LLC AND TOWN OF LEESBURG (Collectively "**Requestor**") enter into this Consent Agreement for Right of Way Encroachment ("**Agreement**") prepared by Company this 12<sup>th</sup> day of **February, 2015**.

Company is willing to grant to Requestor, this Agreement to encroach on, over and/or under a part of Company's easement(s) ("**Easement**" or "**Right of Way**") identified as:

- **W&OD TRAIL – NVRPA CORRIDOR                      PARCELS 38                      COR0525**
- **LINE/STR #(S): 274/236-237; 227/176-177**

The encroachment ("**Encroachment**") is described as:

- **24" HDPE reuse waterline in 42" steel casing – by boring**

The Encroachment as described above is located as follows:

- **Near Sycolin Creek in Loudoun County Virginia.**

Company, under its Easement(s) identified above, hereby grants Requestor permission to install the Encroachment, described above, subject to the following terms and conditions hereinafter set forth.

1. The minimum distance required by the Occupational Health and Safety Administration ("**OSHA**") shall be maintained between electrical conductors and any part of the Encroachment or equipment used in the installation or maintenance of the Encroachment. Sag of conductors varies with changes in operating and ambient temperatures; therefore, required clearances will be based upon maximum sag. The minimum clearance shall be governed by the clearance required for the 230 kV line. See Exhibit(s) "230". For current voltage information see Exhibit "C" and "D". Voltage and conductor arrangement is subject to change. It is Requestor's responsibility to confirm voltage and location of conductors prior to installation, maintenance or repair of the Encroachment.
2. Company access to its facilities shall not be hampered at any time by the installation, use, maintenance or presence of the Encroachment. Company shall not be liable for damage to the Encroachment resulting from exercise of its Easement rights.

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3. Permission for the Encroachment described in Exhibit(s) "A" and "B" does not include permission for storage on Company Easement of material or equipment related to the Encroachment.
4. No portion of any building, house, garage, porch, deck, shed, trailer, barn, playhouse, above-ground or in-ground swimming pool, dumpster or any other type of structure, temporary or permanent, shall be permitted on the Easement.
5. Requestor shall restore any erosion or settling, within the Easement, related to the installation or maintenance of the Encroachment. Requestor shall comply with all state and local erosion and sedimentation control laws, and shall not adversely affect grade elevations and water drainage patterns.
6. It is the Requestors responsibility to notify Company of any damage to Company facilities by Requestor, its employees, contractors or agents. If any counterpoise (ground wire buried eighteen (18) to twenty-four (24) inches deep) is damaged, cut or severed, notify Cecil Spitler - Manager Field Transmission Lines, immediately so necessary repairs can be made.

Mobile: (540) 661-2616

E-Mail: [Cecil.D.Spitler@dom.com](mailto:Cecil.D.Spitler@dom.com)

7. Requestor shall be responsible for all associated costs for the repairs of Company facilities (including but not limited to structures, guys, anchors or counterpoise) damaged by Requestor, his/her/their/its employees, contractors or agents.
8. If the Encroachment is determined to be unsafe by the Company at a future date, the unsafe condition shall be corrected or removed at Requestor's expense within forty-five (45) days after written notification from the Company. If not so corrected or removed by Requestor, the unsafe condition may be corrected or removed by the Company at Requestor's expense without liability by the Company for any resulting damage.
9. This Agreement in no way reduces the Company's rights under the Easement(s) identified above. The Company may at any time exercise its Easement rights in a way that conflicts or interferes with the Encroachment described above. Upon notice from the Company, the Requestor will promptly modify, rearrange or remove the Encroachment to enable the Company to exercise its Easement rights without conflict or interference with the Encroachment. Requestor will be responsible for the cost of any such modification, rearrangement or removal. If Requestor fails to so modify, rearrange or remove the Encroachment within forty-five (45) days after notice from the Company to do so, the Company may modify, rearrange or remove the Encroachment without liability for damage resulting there from, and Requestor shall promptly reimburse the Company for the cost of such modification, rearrangement or removal.

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10. Requestor shall begin physical installation of the Encroachment within one (1) year of the date of execution of this Agreement. If installation does not begin within that period, this Agreement shall become invalid. A new Encroachment application must be submitted before further consideration and will be subject to a processing fee. For the avoidance of doubt, Company's permission for this Encroachment in no way implies or assures that Company will reissue an Agreement for this Encroachment in the future should this Agreement become invalid.
11. Requestor shall give at least five (5) days advance notice, except in emergencies, of any activities being performed within the Easement to Gary Dorman Sr. Right-of-Way Management Representative

Mobile: (571) 203-5085

E-Mail: [Gary.Dorman@dom.com](mailto:Gary.Dorman@dom.com)

so that the Company, at its discretion, may have an inspector present while the work is in progress. **Requestor pays the costs of the inspector.**

12. This Agreement provides Requestor only with approval to encroach on Company's electric transmission Easement. For the avoidance of doubt, Company's approval of this Encroachment in no way implies or assures that Company will grant Requestor's future request (if any) that Company quitclaim or subordinate in favor of Requestor any portion of Company's electric transmission Easement.
13. GREEN ENERGY PARTNERS, their heirs, successors, assigns, contractors or subcontractors hereby agree to indemnify and save harmless Company, its officers, agents and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of or growing out of the Agreement hereby granted, except when such claims and demands are caused solely by the negligence or willful conduct of Company, its agents, employees, successors or assigns.
14. Company shall not be responsible or liable for injuries to persons, including death, or damage to property when such injuries or damages are caused by, result from, or are on account of or growing out of the Agreement hereby granted the TOWN OF LEESBURG and are not due solely to the negligence or willful misconduct of Company, its agents, employees, successors or assigns. TOWN OF LEESBURG shall require its contractor(s) to indemnify Company against any loss, damage or liability arising from work performed or permitted by TOWN OF LEESBURG or its contractor(s) on the right-of-way and to have insurance coverage for such indemnification.

**[CONTINUED ON NEXT PAGE]**

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Before TOWN OF LEESBURG'S contractors, subcontractors and assigns enter upon Company's Easement, TOWN OF LEESBURG'S contractors, subcontractors and assigns shall obtain or keep, in full force and effect, with respect to its/their work within the Company's Easement, with insurance companies authorized to do business in the Commonwealth of Virginia, the following insurance:

- a) Workers compensation insurance as required by the statutory benefit laws of the Commonwealth of Virginia or approved self-insurance and employers liability insurance with limits of at least \$1,000,000.00 bodily injury by accident and \$1,000,000.00 each employee for bodily injury by disease.
- b) Commercial general liability insurance with coverage limits of at least \$2,000,000.00 each occurrence, \$2,000,000.00 aggregate. Such insurance shall include, but not be limited to, specific coverage for contractual liability encompassing the previously referenced indemnity and liability requirements.
- c) Automobile liability insurance covering bodily injury and property damage with a total limit of at least \$2,000,000.00 per accident. Such insurance shall cover liability arising out of any automobile (including owned, hired and non-owned automobiles).

The insurance required in paragraph (b) above shall: (1) name Company, its officers, directors and employees as an additional insured; (2) be primary coverage with respect to any liability coverage carried by the Company; and (3) provide for claims by one insured against another such that, except for the limits of insurance, the insurance shall apply separately to each insured against whom a claim is made or suit is brought.

TOWN OF LEESBURG'S contractors, subcontractors and assigns waive, and will require their insurers to waive, all rights of recovery against Company for damages to the extent these damages are covered by the insurance required to be maintained pursuant to the insurance requirements.

Before TOWN OF LEESBURG'S contractors, subcontractors and assigns enter upon Company Easement, and thereafter upon the renewal of their insurance policies, TOWN OF LEESBURG'S contractors, subcontractors and assigns, shall provide certificates of insurance to Company evidencing the coverage and limits required by this Agreement and that Company, its officers, directors and employees are an additional insured. Failure of Company to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Company to identify a deficiency from evidence that is provided shall not be construed as a waiver of the obligation of TOWN OF LEESBURG'S contractors, subcontractors and assigns to maintain such insurance.

TOWN OF LEESBURG'S contractors, subcontractors and assigns, or their respective agents, representatives or insurers shall provide thirty (30) days prior written notice of cancellation to Company, except for non-payment of premium to which ten (10) days notice shall apply.

15. Fire hydrants, manholes, junction boxes and/or valve boxes are not permitted on Company's Easement.

16. Requestor shall notify MISS UTILITY (1-800-552-7001) in a timely manner in advance of construction to allow existing nearby underground utility conflicts to be identified.

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17. A minimum of thirty-six (36) inches of cover measured from the top of the pipeline to existing ground elevation is to be maintained. The pipeline shall be designed to support traffic crossings by heavy construction and maintenance equipment and shall be capable of withstanding AASHTO designation HS20-44 wheel loadings. See Exhibit(s) "A" and "B".
18. The pipeline crossing as proposed on Exhibit(s) "A" and "B" is approved with no part of the Encroachment located within twenty-five (25) feet of any Company structure, foundation, guy, anchor or any other Company facilities.
19. Unless otherwise specified in this Agreement, the site plans/drawings prepared by GREEN ENERGY PARTNERS AND TOWN OF LEESBURG (**Requestor**), entitled "GREEN ENERGY PARTNERS WATER REUSE LINE", sheet numbers 1 OF 1, dated/received 01/02/2014, shall be strictly adhered to. See Exhibit(s) "A".
20. Motor vehicles may be parked on Company Easement provided that:
  - a. They do not exceed a height of 13 feet 6 inches.
  - b. They are not house, office or construction trailers.
  - c. They do not carry explosives or flammable cargo.
  - d. They are operative and the parking is of a transient nature.
  - e. They have current inspection decals and do not violate any local ordinances.
21. Use of Company Easement access road(s) by Requestor is approved provided the road(s) is/are left in equal or better condition. This Agreement by Company for the use of its Easement access roads shall in no way be construed as permission or approval from the affected land owner(s). The Requestor shall obtain permission from each affected property owner in the appropriate manner.
22. No debris shall be buried on Company Easement; which shall include but not be limited to stumps, large boulders, concrete, asphalt, trees, storm drainage pipe, hazardous waste, scrap materials or any other waste material.
23. No temporary construction offices, sheds or related structures are to be placed on Company Easement.
24. Trash receptacles or dumpsters shall not be placed on Company Easement.
25. No burning is allowed on Company Easement.
26. Requestor is responsible for acquiring, from the owners of the underlying fee simple or otherwise, any additional **underground** property rights necessary for the Encroachment location. For the avoidance of doubt, Company does not convey, or otherwise transfer to Requestor any Easement right that Company may hold nor does Company make any

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representation or warranty as to the status or availability of any rights that may be required for Requestor to make use of the Encroachment or Easement.

27. It is the responsibility of the Requestor to ensure that all contractors or sub-contractors are aware, informed of and abide by these conditions.

28. The above conditions only apply as specific to and set forth in this Agreement and do not set a precedent for further Agreements.

29. All notices, requests, demands and other communications required to be given, (except as otherwise indicated) shall be deemed to have been duly given if in writing and mailed, as follows:

If to  
Requestor: Panda Stonewall LLC  
4100 Spring Valley Road, Suite 1001  
Dallas, TX 75244  
Attention: Ross Metersky

If to  
Company: Dominion Virginia Power  
One James River Plaza, 12<sup>th</sup> Floor  
701 East Cary Street  
Richmond, Virginia 23219  
Attention: Electric Transmission Rights-of-Way

This Agreement is granted only to Requestor. It is not an interest in real property; it does not run with the underlying land or benefit any successors in interest to the underlying land, and it may not be assigned or transferred to anyone else without the prior written approval of Company, which Company may withhold in its sole discretion. [If Requestor is not the owner of the property on which the Encroachment is to be located; it is Requestor's responsibility to obtain any and all necessary permission(s) or easement(s) from the property owner(s) for the Encroachment prior to installation.]

For this Agreement to become effective, Company must be in possession of the executed Agreement.

- **Encroachment fee was paid on March 30<sup>th</sup>, 2014 in the original agreement issued on March 10<sup>th</sup>, 2014.**

Requestor must return the executed Agreement to Company by **March 10, 2015** to:

Dominion Virginia Power  
701 E. Cary Street, 12<sup>th</sup> Floor  
Richmond, VA 23219  
Attention: Nicholas Briley, Right of Way Management Representative  
Phone: (804) 771-6045 Email: [Nicholas.D.Briley@dom.com](mailto:Nicholas.D.Briley@dom.com)

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Additional contact: Dominion Electric Transmission Right-of-Way at 1-800-215-8032 (press # 1 at the prompt) or e-mail at [ETROW@dom.com](mailto:ETROW@dom.com).

Company, Authorized Representative, will execute and finalize Agreement upon return of Agreement executed by Requestor or its Authorized Representative. Requestor will be provided a fully executed copy of Agreement for their records.

In consideration of this Agreement granted by Company for the above-described Encroachment, Requestor hereby agree(s) to the terms and conditions stated in the foregoing Agreement.

Company and Requestor hereby cause this Agreement to be executed by their duly Authorized Representative.

VIRGINIA ELECTRIC AND POWER COMPANY

By:

\_\_\_\_\_  
Angelita Gardner-Kittrell  
Supervisor, Right of Way Management & Permitting  
Electric Transmission  
Authorized Representative

\_\_\_\_\_  
Date

PANDA STONEWALL LLC

By:



\_\_\_\_\_  
3-3-2015

~~Ross Metersky~~ RICHARD EVANS, SR. VICE PRESIDENT  
Authorized Representative  
sre

\_\_\_\_\_  
Date

TOWN OF LEESBURG

By:

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

PRESENTED April 14, 2015

RESOLUTION NO. 2015-

ADOPTED \_\_\_\_\_

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN ENCROACHMENT AGREEMENT BETWEEN THE TOWN OF LEESBURG, PANDA STONEWALL, LLC, AND DOMINION VIRGINIA POWER (“DVP”) TO ALLOW A RECLAIMED WATER LINE TO CROSS DVP’S EASEMENT ALONG THE W&OD TRAIL

WHEREAS, Green Energy Partners/ Panda Stonewall LLC (“GEP”) project will need to cross a Dominion Virginia Power (“DVP”) electric transmission easement; and

WHEREAS, the GEP project is for the construction of a reclaimed water line, which line is also known as the “purple line”, to serve the GEP Clean Energy Power Plant; and

WHEREAS, once constructed by GEP, the reclaimed water line (“purple line”) will be owned, operated and maintained by the Town of Leesburg (“Town”); and

WHEREAS, a portion of the designated route for the purple line will cross the Washington and Old Dominion Trail (“W&OD Trail”) which is owned and operated by the Northern Virginia Regional Park Authority (“NVRPA”), and

WHEREAS, DVP owns an easement along and over the W&OD Trail; and

WHEREAS, Resolution No, 2014-037 authorized the execution of a License Agreement between the Town, GEP and the NVRPA to allow for the construction, operation and maintenance of the reclaimed water line (“purple line”) under a portion of the W&OD Trail; and

WHEREAS, Resolution No. 2014-046 authorized the execution of an Encroachment Agreement to allow the reclaimed water line (“purple line”) to cross DVP’s easement along the W&OD Trail; and

WHEREAS, the encroachment agreement specified that if the physical installation of the encroachment does not begin within one (1) year of the date of the execution of the Agreement then the Agreement becomes invalid; and

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN ENCROACHMENT AGREEMENT BETWEEN THE TOWN OF LEESBURG, PANDA STONEWALL, LLC, AND DOMINION VIRGINIA POWER (“DVP”) TO ALLOW A RECLAIMED WATER LINE TO CROSS DVP’S EASEMENT ALONG THE W&OD TRAIL

WHEREAS, construction of the purple line by GEP did not commence within the one (1) year period as specified in the Encroachment Agreement; and

WHEREAS, the parties now wish to enter into a new Agreement to extend the time for GEP to begin construction of the reclaimed water line (“purple line”) to cross DVP’s easement along the W&OD Trail; and

WHEREAS, the Town Attorney has reviewed the encroachment agreement; and

WHEREAS, the principals of Panda Stonewall, LLC have approved the encroachment agreement and will pay any fees; and

WHEREAS, construction of the reclaimed (“purple”) water line will benefit the residents of Leesburg.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Mayor is authorized to execute the encroachment agreement and any future extension agreements with DVP and Panda Stonewall for the reclaimed water line so long as the Town Attorney approves the agreement(s).

PASSED the \_\_\_\_ day of April, 2015.

\_\_\_\_\_  
Kristen C. Umstattd, Mayor  
Town of Leesburg

ATTEST:

\_\_\_\_\_  
Clerk of Council