



Date of Council Meeting: September 8, 2015

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: An encroachment agreement for construction of the purple line.

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

Council Action Requested: A resolution authorizing the Mayor to execute a Consent Agreement for Right of Way Encroachment needed for construction of the purple line.

Staff Recommendation: The Town Council should approve a resolution authorizing the Mayor to execute an encroachment agreement and future extension agreements with Dominion Virginia Power (DVP) and Green Energy Partners/Panda Stonewall (GEP) which will allow the purple line to cross DVP's easement over and across the property Luck Stone Corporation and Twenty Years Later, LLC in an area north of Cochran Mill Road in Loudoun County.

Commission Recommendation: Not Applicable.

Fiscal Impacts: The processing and impact fee associated with this encroachment agreement will be paid by Green Energy Partners/Panda Stonewall.

Work Plan Impacts: Not applicable.

Executive Summary: The encroachment agreement is needed by Dominion Virginia Power (DVP) to allow the purple line to cross properties on which DVP has an easement. The purple line will be constructed by Green Energy Partners/Panda Stonewall, but will be owned and operated by the Town.

Background: The reclaimed waterline / purple line serving the Green Energy Partners / Panda Stonewall electric generation facilities will need to cross a Dominion Virginia Power (DVP) electric transmission line. Luck Stone Corporation and Twenty Years Later, LLC have conveyed a reclaimed waterline easement to the Town for construction and operation of the reclaimed waterline ("purple line") crossing their property. DVP requires an encroachment agreement to be executed by the Town before allowing construction of the purple line through and across its easement.

Attachment: Encroachment Agreement
Proposed Resolution



Reference #: TE 015048005

Consent Agreement for Right of Way Encroachment

VIRGINIA ELECTRIC AND POWER COMPANY ("**Company**") and PANDA STONEWALL LLC AND THE TOWN OF LEESBURG ("**Requestor**") enter into this Consent Agreement for Right of Way Encroachment ("**Agreement**") prepared by Company this _____ day of _____, 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:

- **LOUDOUN – DICKERSON CORRIDOR PARCELS 46-47 COR0275**
- **LINE/STR #S: 514/1853, 203/2-3, AND 2098/4-5**

The encroachment(s) ("**Encroachment(s)**") shall be described as:

- 24" pvc reclaimed water line in 36" steel encasement
- Some blasting

The location of the Encroachment(s) as listed above is as follows:

South of Samuels Mill Road and west of Cochran Mill Road Leesburg, Virginia

Company, under its Easement(s) identified above, hereby grants Requestor permission to install the Encroachment(s), 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(s) or equipment used in the installation or maintenance of the Encroachment(s). 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 500 kV line. See Exhibits "A", "B", "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(s). Company shall not be liable for damage to the Encroachment(s) resulting from exercise of its Easement rights.
3. Permission for the Encroachment(s) described in Exhibits "E", "F", and "G" does not include permission for storage on Company Easement of material or equipment related to the Encroachment(s).

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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. This includes, but is not limited to, any building projection or attachment such as roof overhang, gutters, garage lighting or window appurtenances. Portions of buildings and other structures found within Company's Easement(s) are required to be removed when discovered.
5. Requestor shall restore any erosion or settling, within the Easement, related to the installation or maintenance of the Encroachment(s). 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

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 it is determined by the Company at a future date that the Encroachment(s) or any portion thereof may be unsafe, 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(s) described above. Upon notice from the Company, the Requestor will promptly modify, rearrange or remove the Encroachment(s) or any portion thereof. 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(s) or any portion thereof within forty-five (45) days after notice from the Company to do so, the Company may modify, rearrange or remove the Encroachment(s) or any portion thereof without liability for damage resulting therefrom, and Requestor shall promptly reimburse the Company for the cost of such modification, rearrangement or removal.
10. Requestor shall begin physical installation of each Encroachment listed within one (1) year of the date of execution of this Agreement. If installation of the Encroachment(s) does not begin within that period, this Agreement will be terminated. A new

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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 the Encroachment(s) in no way implies or assures that Company will reissue an Agreement for the Encroachment(s) in the future should this Agreement be terminated.

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

so that the Company, at its discretion, may have an inspector present while the work is in progress. Requestor agrees to pay for 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 the Encroachment(s) 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. 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, and are not due solely to the negligence or willful misconduct of Company, its agents, employees, successors or assigns. Requestor shall require its contractor(s) to indemnify Company against any loss, damage or liability arising from work performed or permitted by Requestor or its contractor(s) on the right-of-way and to have insurance coverage for such indemnification.
14. Fire hydrants, manholes, junction boxes and/or valve boxes are not permitted on Company's Easement.
15. **No blasting on Company's Easement is allowed until Requestor has submitted a blasting plan and received written approval of the blasting plan from Company Structural Engineer. Blasting on the Easement is to be avoided if possible but, if unavoidable, a minimum explosive charge and matting must be used to prevent damage to Company facilities. Notice must be given to Company's Right-of-Way Management Representative five (5) days in advance of any blasting. A Company inspector may be required to be on site and will be provided at the cost of Requestor. See Exhibit "H".**
16. Drainage ditches of such depth as to obstruct travel along or access to Company Easement are not permitted unless such ditches are provided with culverts installed and maintained at no cost to the Company.
17. Culverts shall be designed to support traffic crossings by heavy construction and maintenance equipment, and shall be capable of withstanding AASHTO designation

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HS20-44 wheel loadings. Any culverts beneath access roads must be sized to accommodate water flows and prevent pooling on Company Easement.

18. 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.
19. 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 "G".
20. If a cathodic protection system is used to protect the pipeline, it shall be designed to cause no corrosion in the counterpoise or any other part of Company facilities. [all steel pipes]
21. The Reclaimed Water Line crossing as proposed on Exhibits "E", "F", and "G" is approved with no part of the Encroachment(s) located within twenty five (25) feet of any Company structure, foundation, guy, anchor or any other Company facilities.
22. Unless otherwise specified in this Agreement, the site plans/drawings prepared by Gordon, entitled "Town of Leesburg Reclaimed Water Line", sheet numbers 1, 8, and 29 of 44, dated January 2015, shall be strictly adhered to. See Exhibits "E", "F", and "G".
23. There shall be no grading, excavation, filling or other construction activities within twenty-five (25) feet of any Company structure, foundation, guy, anchor or any other Company facilities. An exception has been made to this condition. Neither trench excavation, nor trench layback shall be closer than twenty (20) feet to Company structure 2098/4. If this requirement cannot be met the Company shall be notified and a new plan may need to be submitted for approval. The above condition only applies as specific to and set forth in this Agreement and does not set a precedent for further Agreements.
24. The Company recognizes the existence of an existing LCSA Temporary Construction Easement but requires no construction activities to occur within twenty five (25) feet of Company structure 2098/4. At the completion of approved encroachment said easement shall be vacated within Company Transmission Easement.
25. In all cases, spoil material is prohibited and will not be permitted on Company Easement.
26. 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.
27. No temporary construction offices, sheds or related structures are to be placed on Company Easement.

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28. No burning is allowed on Company Easement.

29. Requestor is responsible for acquiring, from the owners of the underlying fee simple or otherwise, any additional underground property rights necessary for the Encroachment(s) 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 representation or warranty as to the status or availability of any rights that may be required for Requestor to make use of the Encroachment(s) or Easement.

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

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

32. 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: Viridian Consulting LLC
P.O. Box 2397
Purcellville, Virginia 20134
Attention: Jordan Dimoff

If to
Company: Dominion Virginia Power
One James River Plaza, 12th 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(s) will 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(s) prior to installation.]

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For this Agreement to become effective, Company must be in possession of both the executed Agreement and the required processing and impact fee.

Requestor must return the executed Agreement to Company by **July 1, 2015**, to:

Dominion Virginia Power
701 E. Cary Street, 12th Floor
Richmond, VA 23219
Attention: Cynthia Nelson, Sr. Right of Way Management Representative
Phone: (804) 771-6198 Email: cynthia.l.nelson@dom.com

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.

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.

[SIGNATURES TO FOLLOW]

April 30, 2015

VIRGINIA ELECTRIC AND POWER COMPANY

By:

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

Date

PANDA STONEWALL LLC

By:



Authorized Representative *se*

6/24/2015

Date

Ralph Killian, Partner

Print Name and Title

TOWN OF LEESBURG

By:

Authorized Representative

Date

Print Name and Title

PRESENTED September 8, 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.

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 waterline, 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 property of Luck Stone Corporation and Twenty Years Later, LLC, and

WHEREAS, DVP owns an easement over and across a portion of the property of Luck Stone Corporation and Twenty Years Later, LLC ; and

WHEREAS, Luck Stone Corporation and Twenty Years Later, LLC have conveyed by Deed of Easement a reclaimed waterline easement to the Town for the construction and operation of the reclaimed waterline (“purple line”) on their property, and

WHEREAS, DVP requires an encroachment agreement to allow the reclaimed waterline (“purple line”) to cross its easement, 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

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.

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 future extension agreements with DVP and Panda Stonewall for the reclaimed water line so long as the Town Attorney approves the agreement.

PASSED the ____ day of September, 2015.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council