Sitting Power Lines in Historic Areas of Virginia

Amy Leigh Sheridan
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I. INTRODUCTION

Historic preservationists in Virginia have a legislative tool to challenge a utility that seeks to erect a power line near a historical area. A public utility seeking approval of a proposed transmission line route must not only obtain a certificate of convenience and necessity pursuant to section 56-265.2 of the Virginia Code, but it must also comply with section 56-46.1 as well. With the passage of section 56-46.1, any interested party has the right to notice and the right to a hearing before the State Corporation Commission (SCC or Commission) when a power line siting decision is pending. Before approving a site, the Commission must be satisfied that the utility will minimize adverse scenic, historical, and environmental impacts.

In 1971, Virginia adopted a new constitution. Included in the new version is Article XI which states the importance of natural resources and historical sites, and establishes the policy of the Commonwealth to “conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings.” In its first session following adoption of the new Virginia Constitution, the General Assembly enacted section 56-46.1 to effectuate this new policy. Prior to the revised Constitution and the passage of section 56-46.1, the Commission had not asserted authority over the location of transmission lines and


3. Id. § 56-46.1(C).
4. Id. § 56-46.1(A).
5. VA. CONST. of 1971, art. XI, § 1.
generating plants. The statute, as currently drafted, requires the SCC to consider the impact of new electrical facilities and power lines on the historical and environmental assets of the affected areas.  

II. JURISDICTION

Under section 56-46.1, a utility must receive the Commission's approval for the construction of any power line of at least 150 kilovolts. While this statute does not provide help for preservationists seeking to remove existing power lines, it does serve as a weapon against a utility company that wishes to use an existing corridor to lay new, high-voltage lines. In other words, a utility cannot escape historical and environmental review merely by upgrading an existing route. In *Virginia Electric & Power Co. v. Citizens for Safe Power*, the supreme court held that the environmental review of applications to construct transmission lines is not limited to instances in which new rights-of-way are proposed. The Virginia Supreme Court stated that environmental review of applications can also occur when a utility proposes placement of a new line in an existing right-of-way. *VEPCO argued that the language requiring a utility to prove that an existing right-of-way cannot adequately serve its needs acted as an exemption from environmental review. However, the court held that VEPCO's interpretation was contrary to legislative intent, and that upgrading an existing corridor will not always be less damaging to the environment than clearing a new corridor.*

In *Citizens for Safe Power*, the court gave aid to preservationists by negating a utility's automatic right to make

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6. VA. CODE ANN. § 56-46.1.
7. *Id.*
9. *Id.* at 615.
10. *Id.* at 614.
11. *Id.* The Virginia Supreme Court had previously held that when making its determination regarding adverse environmental impact, "it was the intent of the General Assembly that the Commission obtain all relevant environmental information..." Board of Supervisors v. Appalachian Power Co., 215 S.E.2d 918, 925 (Va. 1975).
an existing line larger. Two years later, the Virginia Supreme Court gave preservationists another boost. The court held in *Virginia Electric & Power Co. v. Board of County Supervisors* that the Commission had historical and environmental impact jurisdiction over VEPCO’s proposal to upgrade a pre-1972 corridor carrying power lines. VEPCO argued that the statute’s grandfather clause precluded environmental review since the existing corridor was obtained prior to 1972. The court rejected the argument, stating that such an interpretation would allow all utilities that acquired corridors before 1972 to install transmission lines without review. The court explained that the grandfather clause was designed to protect utilities that had acquired rights-of-way but had not started construction before the act was passed. Although the grandfather clause in Prince William County was eventually eliminated in a 1983 amendment to section 56-46.1, the case remains important because it reveals the court’s interpretation of the statute. Preservationists can use the cases discussed above to challenge a utility that tries to expand the limits of the new grandfather clause.

III. ZONING

Section 56-46.1(F) clearly states that approval of a transmission line pursuant to the statute satisfies local zoning ordinances. While local zoning boards are more likely to be sympathetic to historical properties, the Commission usually favors growth and progress. As a result, preservationists must vigorously challenge the siting before the Commission.

13. *Id.* at 312.
14. *Id.* at 311.
15. *Id.*
16. *Id.*
17. *Id.* The 1983 amendments created a different grandfather clause for lines constructed prior to January 1, 1983. The Commission issues a certificate of convenience and necessity for projects prior to this date. See VA. CODE ANN. § 56-46.1 (Michie Cum. Supp. 1994).
18. VA. CODE ANN. § 56-46.1(F).
IV. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Before beginning construction of a transmission line, a utility must petition the SCC for a certificate of public convenience and necessity.19 Each utility must comply with certain filing requirements depending on the type of application. An example of one type of filing requirement is the necessity statement. According to guidelines published by the SCC, a utility's necessity statement should include a detailed engineering justification for the proposed project, a description of the present system and how the proposed project will satisfy present and future demand, feasible alternatives for meeting the need without new construction, and the estimated cost of the project.20 Before a certificate of necessity can be issued, the Commission must hold either a formal or an informal hearing and give due notice to interested parties.21 An additional consideration exists when the proposed line is equal to or greater than 150 kilovolts. In this case, compliance with section 56-46.1 is required in order for the utility to receive the certificate.22

A. Application Process

In addition to issuing a certificate of public convenience and necessity, the SCC must consider environmental factors before approving the construction of a transmission line of 150 kilovolts or more.23

The SCC guidelines list the filing requirements for an application under section 56-46.1: (1) "necessity for the proposed proj-

21. VA. CODE ANN. § 56-265.2
22. Id.
ject, 24 (2) "description of the proposed project," 25 (3) "impact of line on scenic, environmental, and historic features," 26 (4) "health aspects of EMF," 27 and (5) "notice." 28

The description of the proposed project section in the necessity statement should include a detailed analysis of the right-of-way, line design, and operational features. 29 Among the right-of-way requirements, the utility must provide a map showing the proposed route and its relation to highways, parks, schools, and historic areas. 30 It also must describe the route selection process, discuss alternative routes, and state why the proposed route was selected and the alternatives rejected. 31 Furthermore, it must show how building the line complies with the Federal Energy Regulatory Commission guidelines. 32 To satisfy the line design and operational features section, the utility must state the number and size of the circuits and conductors. 33 A detailed description of the proposed supporting structures and the reason why the proposed structure type was selected must be included. 34

To complete the section on environmental and historic impact as required by the SCC guidelines, the utility must undergo a lengthy investigation. Among its many tasks, the utility must:

24. SCC GUIDELINES, supra note 20, at 2.
25. Id. at 3.
26. Id. at 6.
27. Id. at 8. EMF stands for "electric and magnetic field." Id. Under the guidelines, a utility needs to calculate and state the maximum EMF levels near the right-of-way. Id.
28. Id. at 9.
29. Id. at 6.
30. Id.
31. Id. at 4.
33. SCC GUIDELINES, supra note 20, at 5.
34. Id. at 5-6.
1. Describe the character of the area the line will cross including land use, wetlands, and so forth, and provide the number of homes within 500 feet of the line.

2. List any public meetings it has held with neighborhood associations and government officials with an interest in or responsibility for the area.

3. Describe the nature, location, and ownership of all buildings which must be demolished or relocated if the project is approved.

4. Detail whether it investigated area land use plans, and describe how the new line would affect future land use. The utility must give special attention to farmland protected by Virginia Code section 3.1-18.5(3).

5. Identify any site within or adjacent to the proposed route which is included in the National Register of Historic Places or the Virginia Landmarks Register; any historic district designated by the governing body of any city or county; any state archaeological site or zone designated by the Director of the Virginia Department of Historic Resources or by a local archaeological commission; and any underwater historic property designated by the Virginia Department of Historic Resources.

6. Identify any area within or adjacent to the proposed route which is designated a National Natural Landmark or on the Virginia Registry of Natural Areas; any area in the Virginia Natural Area Preserves System; any conservation easement qualified under Virginia Code sections 10.1-1009 to -1016; any state scenic river; and any forest, game, wildlife preserve, recreational area, or similar facility of the locality, state or federal government.

7. Identify any scenic byways near the line and discuss the steps to be taken to mitigate any visual impacts.

35. "Farmland, other than prime or unique farmlands, that is of statewide or local importance for the production of food, fiber, forage, or oilseed crops." VA. CODE ANN. § 3.1-18.5(3) (Michie Repl. Vol. 1994).

36. The purposes of a conservation easement include "preserving the historical, architectural, or archaeological aspects of real property." VA. CODE ANN. § 10.1-1009 (Michie Repl. Vol. 1993).

37. SCC GUIDELINES supra note 20, at 6-8. For the complete list of procedures
Clearly, utilities must fully consider the impact of new construction on the affected area in its application. Accordingly, the utility must learn about the historical areas near the proposed route. If a utility discovers that a historic area may be affected, the wise and favorable choice is to place the line elsewhere. This process weeds out many poor siting locations.

To satisfy the discussion of EMF health effects, the utility must state the “maximum electric and magnetic field levels expected to occur at the edge of the right-of-way.” If the utility believes that “no significant health effects” will result from the construction of the line, it must give the reasons and the supporting documentation for its conclusion. The utility must also describe any current, legitimate EMF studies.

To satisfy the notice requirement under the SCC guidelines, the utility is required to provide a proposed route description and corresponding map of a “suitable scale.” Next, the location of its offices where the public may read the application needs to be included. Finally, the utility must “list all federal, state, and local agencies and/or officials who may reasonably be expected to have an interest in the proposed construction and to whom the Company has or will furnish a copy of the application.”

B. Public Hearings

The SCC may hold an initial hearing to determine necessity and then hold a second hearing concerning the location of the line, or it may hold a single hearing to consider both necessity and environmental impact. By express language in section 56-265.2, a certificate of public convenience and necessity cannot be issued until there is compliance with the provisions of 56-

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38. SCC GUIDELINES, supra note 20, at 8.
39. Id.
40. Id. at 9.
41. Id.
42. Id.
This provision does require a single hearing for environmental impact to be considered before need. In fact, need is usually determined first because without it, an environmental review would be moot. The problem with holding a need hearing before the environmental hearing, however, is that once need is established, the only remaining issue is where the line should be located in order to minimize adverse environmental impact. This leaves preservationists with a weak hand. The preservationists, in turn, must intervene and rally to keep power lines away from historically significant areas.

V. SCC's Role in an Environmental Review

Preservationists face many barriers due to the broad discretion granted to the SCC. In subsection A of Virginia Code section 56-46.1, the statute requires “consideration” of environmental factors in approving the construction of electrical facilities. In subsection B, the SCC must determine that a proposed power line route will “reasonably minimize adverse impact on the scenic assets, historic districts, and environment of the area concerned.” Thus, the statute presents different duties of review depending on the type of construction pending.

Specific factors to be considered and the standard to be applied in “considering” the environmental impact are left to the discretion of the SCC. This discretion makes challenging a utility before the SCC difficult and challenging an SCC decision in court nearly impossible. The SCC has proven, however, that it is concerned with environmental issues. This is evidenced by the detailed investigation process required by the SCC when a utility files an application.

In power line sitings, the SCC has broad discretion in “determining” whether the route the line is to follow “will reasonably

45. VA. CODE ANN. § 56-46.1(B).
46. The term “consideration” is not defined in the statute, and courts have upheld SCC decisions where the SCC held hearings and received competent evidence. See Rappahannock League for Envtl. Protection, Inc. v. Virginia Elec. & Power Co., 222 S.E.2d 802 (Va. 1976).
minimize adverse impact." The lack of specificity in the SCC's authority inevitably results in confusion and the application of conflicting criteria. In *Citizens for Preservation of Floyd County v. Appalachian Power Co.*, the citizens argued that the SCC failed to establish criteria for evaluating scenic and environmental assets or to provide a rational framework for decision-making. The court made short work of this argument. By adopting Federal Power Commission guidelines, the court held that the Commission satisfied its duty to establish conditions to minimize the environmental impact of utility lines. The citizens never alleged that the guidelines were insufficient, and thus the court found that the Commission met its obligation imposed by section 56-46.1. In the future, a court may require more definite criteria in the clarity and application of the Federal Power Commission guidelines. Since the SCC Guidelines of Minimum Requirements for Transmission Line Applications were drafted in 1991, they were not a factor in *Citizens for the Preservation of Floyd County*. However, there have been no challenges to the sufficiency of the SCC guidelines since that date. Arguably, a successful challenge could be raised on the basis that the guidelines merely require a list of various sensitive areas that will be affected and a minimal discussion of alternatives; the guidelines do not discuss the criteria for approving or rejecting an application.

A. Consideration of Alternative Routes

A rational siting decision includes a consideration of alternative routes. A utility may present a variety of proposed routes to the Commission; however, the Commission has authority to consider a route not proposed by the utility. In *Board of Supervisors v. Appalachian Power Co.*, the Virginia Supreme Court held that the legislative intent behind section 56-46.1 was to allow the Commission to obtain all relevant environmental

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49. Id. at 801.
50. Id. (citing Board of Supervisors v. Appalachian Power Co., 215 S.E.2d 918, 925 (Va. 1975)).
51. Id.
information necessary to make a considered judgment.\textsuperscript{52} In making such a judgment, the Commission should consider routes other than those proposed by a utility and should request a study to determine which route might minimize adverse impact on scenic and environmental assets.\textsuperscript{53} This case, then, serves as a tool, allowing preservationists to intervene in a siting case and to propose a more acceptable route. In proposing another route, thorough preparation is essential. Intervenors should not expect the Commission to use its authority to request a further study. Depending on the strength of the utility's presentation, the Commission may make a siting decision at the hearing. Preservationists should present adequate and persuasive evidence in favor of an alternate route and against a damaging one in order to make the decision easier for the Commission.

B. Duty to Receive Reports

As stated in \textit{Board of Supervisors}, the Commission has the authority to request studies to determine which route would least impact the environment.\textsuperscript{54} Additionally, subsection A of section 56-46.1 addresses construction of a facility and states that the Commission "shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection..."\textsuperscript{55} While this language allows the Commission to consider reports relating to environmental protection, subsection B (addressing construction of a power line) does not include any similar provision.\textsuperscript{56} Thus, under a strict construction of the statute, the Commission is not entitled to consider information sent by state environmental agencies in power line cases. Nevertheless, it is doubtful that a utility would challenge the Commission if such information was considered. Furthermore, it is even more doubtful that a court would overturn a decision on those grounds.

\textsuperscript{52} 215 S.E.2d 918, 925 (Va. 1975).
\textsuperscript{53} \textit{Id}.
\textsuperscript{54} \textit{Id}.
\textsuperscript{56} \textit{Id}. § 56-46.1(B).
The Virginia Supreme Court has not made a readily apparent distinction between subsections A and B.\textsuperscript{57} In \textit{Citizens for the Preservation of Floyd County}, a subsection B power line case, the court rejected citizens’ arguments that subsection B of section 56-46.1 required the Commission “to establish a mechanism for informing state agencies of the issues before it and actively soliciting their comments.”\textsuperscript{58} Apparently, the appellant, Appalachian Power Company, failed to argue that the duty to receive information did not apply to subsection B power line cases. The court did not address the issue and merely recited that the SCC has the duty to receive information and to give it due consideration.\textsuperscript{59} Therefore, preservationists may force the Commission to receive and consider information in both facility and power line construction cases.

C. \textit{Notice and Hearings}

Before the SCC can approve construction of a power line, subsection B of section 56-46.1 requires the SCC to provide at least thirty days advance notice by publication in a general circulation newspaper in the counties and municipalities through which the proposed line will pass.\textsuperscript{60} In addition, written notice must be given to the governing body of each affected county and municipality. The notice must include a written description and sketch or map of the proposed route.\textsuperscript{61}

Subsection C provides that an interested party can request a public hearing on the siting.\textsuperscript{62} The SCC must hold a hearing as soon as reasonably practicable at a place chosen by the SCC.\textsuperscript{63} If at least twenty interested parties request a hearing,

\textsuperscript{57} See \textit{Citizens for the Preservation of Floyd County v. Appalachian Power Co.}, 248 S.E.2d 797 (Va. 1978).
\textsuperscript{58} \textit{Id.} at 804.
\textsuperscript{59} \textit{Id.}
\textsuperscript{60} VA. CODE ANN. § 56-46.1(B) (Michie Cum. Supp. 1994).
\textsuperscript{61} \textit{Id.}
\textsuperscript{62} \textit{Id.} § 56-46.1(C). An “interested party” is defined as the “governing bodies of any counties or municipalities through which the line is proposed to be built and persons residing or owning property in each such county or municipality.” \textit{Id.} § 56-46.1(D).
\textsuperscript{63} \textit{Id.} § 56-46.1(C).
the SCC is required to hold at least one hearing in the area to be affected by construction for the purpose of receiving public comment. In such a hearing, the SCC must make a copy of transcripts of previous hearings on the case available for public inspection. Additionally, the copy must be deposited at a convenient location in the area for a reasonable time before the hearing.

Clearly, preservationists have their best opportunity to persuade the SCC if they band together and draw community support to demand a hearing. With twenty interested parties requesting a hearing, a hearing will be guaranteed to the area affected. More people can turn out in support of historic preservation than in support of the utility. Further, the community will receive more information about the project because transcripts of previous hearings will be readily available. On the other hand, if fewer than twenty people request a hearing, the SCC can hold the hearing anywhere without community involvement and copies of prior transcripts are not easily available to the community. Even though transcripts are public record and available to the citizens, someone in the community must make the effort to obtain copies and inform the community. Thus, there are greater benefits to group actions.

The SCC's concept of proper notice has been repeatedly disputed. In *Board of Supervisors v. Appalachian Power Co.*, the county and its citizens claimed they were not given adequate notice required by the statute. The route, which passed through Campbell County, was not initially proposed by the utility and was instead the result of a later feasibility study. The county and interested parties had been notified that a study was being conducted of three possible routes. Interested parties were notified on December 6, 1973 that one route through the county was under investigation. The SCC gave

64. Id.
65. Id.
66. Id.
67. Id.
68. 215 S.E.2d 918 (Va. 1975).
69. Id. at 924.
70. Id.
71. Id. at 920.
these parties until January 31, 1974 to submit comments or request a public hearing. A hearing was subsequently set for March 11, 1974.72 Although the court held that the SCC fully complied with statutory notice requirements, the county argued that it was not given enough time to fight the siting since the county was not included in the original proposed route.73 The court stated that the time limits of thirty days notice prior to a hearing were met and that the SCC scheduled a hearing as soon as reasonably practicable after a request.74 In a further note on the case, the court held that the Commission was free to consider routes other than those proposed originally by the utility.75

Subsection E of section 56-46.1 provides that where the SCC considers a route significantly different from the route described in the original notice, the SCC must provide notice of the new route in accordance with subsection B.76 The newly affected areas are not entitled to special notice and are not given more time to prepare for a hearing. In fact, they are only entitled to the same protection given to interested parties affected by the route described in the original notice.77

In Citizens for the Preservation of Floyd County v. Appalachian Power Co.,78 a citizens group claimed that it did not intervene in the siting case until after the need was established by a hearing because it did not receive adequate notice of the need hearing.79 The notice, published in the weekly Floyd Press, contained a general description of the affected areas but did not describe a specific route.80 Under Virginia Code section 56-265.2, the SCC must merely give "due notice to interested parties."81 The SCC can easily establish proper notice since

72. Id. at 924.
73. Id.
74. Id. at 926.
75. Id. at 925.
77. Id.
78. 248 S.E.2d 797 (Va. 1978).
79. Id. at 798.
80. Id. at 799.
81. It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility ser-
notice is not defined in the statute and no specific elements are required. Thus, the court held that since the notice mentioned that the utility line would be constructed between two certain municipalities, the county was informed that the line could traverse Floyd county.

This case represents the dangers of holding a need hearing prior to an environmental impact hearing. Notice requirements for a need hearing are vague and can work in favor of a utility. Citizens in affected areas may at times not receive notice and at other times may be entirely left out of the need determination. Once need is established, it is usually a foregone conclusion that a line will be constructed somewhere; the only issue left is siting. Citizens who did not attend the first hearing, for whatever reason, may not have the ear of the hearing officer at later hearings.

In *Town of Mt. Crawford v. Virginia Electric & Power Co.*, the Commission published statutory notice in a nearby county newspaper and served the County Board of Supervisors notice in regard to a proposed line. Notice was not served on the town because, based on information found in tax maps, the Commission did not think the line would pass through the area. In fact, the town borders had never been fixed. No hearing was held and the Commission approved construction of the line. Fourteen months after the approval, the town objected to the location of the line, arguing that since the line...
passes through it, the town should have received notice under section 56-46.1. A few months later, the Commission granted the town's request for a hearing but it refused to rule on whether the line was within the town's borders.

Town of Mt. Crawford teaches that preservationists must be alert for publication notice in nearby communities. There is a substantial risk that the SCC will not require notice in situations involving vague border definitions. The town of Mount Crawford was successful in requesting a hearing because of its persistence. However, there is no guarantee that another town will be as successful. In the future, the Commission might consider publication in a nearby newspaper sufficient.

The bottom line is that preservationists must not rely on statutory notice as the sole source of information. They must stay informed by calling the SCC, asking to be placed on the SCC's mailing list for proposed projects, and scouring all area newspapers for notices of utility lines that may land in a historic district.

VI. EXAMPLES OF SECTION 56-46.1 IN PRACTICE

Those seeking to preserve historic areas shudder at the construction of unsightly power lines. The residents of Manassas are a prime example of this phenomena. In June 1991, the Commission approved the construction of a power line through the block between the border of Manassas National Historic District and the City of Manassas Museum. Historic Manassas, Inc. opposed the construction of overhead lines and instead recommended that the portion of the line near the Historic District should be built underground. The group argued that the support structures would both tower over the two-story buildings in the district and be out of scale. Further, the
presence of the supporting structures and lines would damage the aesthetic values sought to be preserved and fostered.\textsuperscript{95} Lastly, the lines would be a barrier between the Historic District and the City of Manassas Museum.\textsuperscript{96}

In response to Historic Manassas' arguments, the utility proposed an alternate route.\textsuperscript{97} The alternate route did not offer to lay any part of the line underground, but only moved the line one block away from the historic district.\textsuperscript{98} Subsequently, the Commission approved the utility's alternate route.\textsuperscript{99} As a condition of the approval, the utility agreed both to rebuild a substation adjacent to the historic district with new equipment of lower profile and to place screening material and embankments around the substation.\textsuperscript{100} The Commission found that moving the construction one block away from the district, along with modifying the substation, reasonably minimized the negative impact on the historic district.\textsuperscript{101}

This case illustrates how utilities can suggest alternatives which minimize only a fraction of the negative impact and succeed in satisfying the Commission. Perhaps the Commission would have ruled differently if the cost of laying underground lines were lower, or if Historic Manassas could have contributed to the cost of the underground lines. Cost, however, is not the only drawback to building underground power lines. High voltage lines cannot be simply buried and forgotten. The lines must be encased in oil for cooling, and pumping stations are needed every few hundred yards to pump the oil around the lines.\textsuperscript{102} The utility must attain road access for clearing and maintaining the underground segment.\textsuperscript{103} There are engineering difficulties, particularly in wetlands areas, and basic reliability

\begin{itemize}
\item \textsuperscript{95} Id.
\item \textsuperscript{96} Id.
\item \textsuperscript{97} Id. at *6.
\item \textsuperscript{98} Id.
\item \textsuperscript{99} Id.
\item \textsuperscript{100} Id.
\item \textsuperscript{101} Id.
\item \textsuperscript{102} Telephone Interview with Wayne Smith, Associate General Counsel of the State Corporation Commission (March 1994).
\item \textsuperscript{103} Id.
\end{itemize}
problems. Unfortunately, although burying power lines reduces the visual impairment of historic areas, their placement is not a simple solution.

In structuring their arguments in power line siting cases, preservationists find guidance through understanding how the Commission treats environmental concerns. In response to VEPCO's 1990 application to build a line through Chesterfield, Henrico, and Charles City counties, the Commission held three hearings to consider the certificate of convenience and necessity and the environmental impact. The Hearing Examiner recommended a route which passed through Curles Neck Farm. In response, Curles Neck submitted exceptions to the Examiner's findings of both need and of minimizing environmental impact. Despite a carefully constructed argument against the need for a new line, the Commission agreed with the Hearing Examiner and adopted his findings establishing need.

The Commission was more accepting of Curles Neck's environmental arguments. The Commission admitted that the Farm has environmental value because it is a wetland and contains threatened or endangered species. The Commission approved the power line but set conditions requiring VEPCO to "make every effort to minimize adverse impact." VEPCO was ordered to consult with Curles Neck during planning and construction of the section traversing the Farm and also on the alternatives of either overbuilding the existing distribution line or building adjacent to the existing line. VEPCO was required to conduct an archaeological survey and cooperate in the preservation, excavation, or study of any significant findings. Finally, the SCC reminded VEPCO of the duty to com-

104. Id.
106. Id. at *1.
107. Id. at *2.
108. Id.
109. Id. at *3.
110. Id. at *4.
111. Id. at *3.
112. Id.
ply fully with all state and federal laws, particularly laws dealing with construction in wetlands and protection of endangered species.\textsuperscript{113}

This case was a tempered victory for Curles Neck Farm. The utility won the right to construct, but the Farm won the right to be heavily involved. Perhaps the Commission was persuaded to truly minimize environmental impact by the fact that the land in question and the animal inhabitants are heavily protected by other state and federal laws. Unfortunately, historical areas do not enjoy such stringent protection. As seen in the Manassas case, even an area designated a national historic district is not immune to power line intrusion and mitigation of adverse impacts in a historical district need only be minimal.

VII. APPELLATE STANDARD OF REVIEW

The State Corporation Commission has broad, general, and extensive powers in regulating public service corporations.\textsuperscript{114} In fact, while courts may articulate the precise standard of review differently, the courts are very deferential to the SCC's findings of fact and judgments. A court will not upset a decision if it is supported by credible evidence in the record.\textsuperscript{115} Thus, the effect is to give SCC decisions the presumption of correctness.\textsuperscript{116} As a result, preservationists who lost the battle before the Commission will probably lose again in court because of this high level of deference given to the Commission.

VIII. CONCLUSION

Preservationists must be aware of any proposed utility line in an area they wish to protect. As soon as they receive notice,
they should mobilize the community in fighting the utility company. They should carefully review the utility's application for construction to determine which historical sites are threatened. At least twenty persons should request a public hearing so that the community is entitled to relevant information and a fair hearing. At the hearing, preservationists must propose a less damaging route. The chance of success increases with the level of preparation and participation. Preservationists may not necessarily win the battle of whether or not to build, but they can persuade the Commission to place the power line in a more desirable location.