

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

COX COMMUNICATIONS HAMPTON ROADS,)	
L.L.C.,)	
)	
<i>Complainant,</i>)	Proceeding No. 15-22
)	File No. EB-15-MD-001
v.)	
)	
DOMINION VIRGINIA POWER,)	
)	
<i>Respondent.</i>)	

DECLARATION OF MICHAEL GRAF

I, MICHAEL A. GRAF, declare as follows:

1. I hold the position of Supervisor – Joint Use Administration for Virginia Electric and Power Company d/b/a Dominion Virginia Power (“Dominion”). My business address is 1719 Hydraulic Road, Charlottesville, Virginia 22901. I am executing this Declaration in support of Dominion’s Response to the Pole Attachment Complaint filed in the above-captioned proceeding.

2. I joined Dominion in 1979, and have been in my current position since 2009. In the role of Supervisor – Joint Use Administration, I am primarily responsible for negotiating and implementing joint use and pole license agreements, and for managing Dominion’s relationships with various communications entities operating within Virginia and North Carolina that maintain attachments on Dominion’s poles. I supervise Dominion’s employees dedicated to these tasks.

3. In addition, I have previous management experience with respect to energy distribution design and energy distribution construction. My career in the electric utility industry spans over thirty-five (35) years.

4. I reviewed allegations put forth by Cox Communications Hampton Roads, L.L.C. (“Cox”) in its Pole Attachment Complaint, and in the supporting Declarations of James Ruel and

Greg Paterson. The purpose of this Declaration is to provide clarification of the circumstances at the Shore Drive pole locations that have given rise to the present dispute between Dominion and Cox, and to correct certain factual misstatements made in Cox's Complaint. I also reviewed the Response of Dominion, dated February 23, 2015, and can attest that the factual allegations made in the Response, its attached exhibits, and this Declaration are true and accurate to the best of my knowledge, information and belief.

5. The dispute between Dominion and Cox relates to two (2) pole locations on Shore Drive, in Virginia Beach, Virginia. At the first pole location, 3601 Shore Drive, Dominion must adjust its electric distribution line, to conform to the Reliability Standards of the North American Electric Reliability Corporation (NERC).¹ At the second pole location, 3657 Shore Drive, Dominion will construct a new "intermediate" pole supporting its existing electric distribution line.² At the present time, no pole exists at 3657 Shore Drive, and thus, Cox maintains no attachment at this location.

6. For purposes of its electric transmission and distribution operations, Dominion is obligated, at all times, to construct, operate and maintain its facilities in a manner that conforms to all applicable industry requirements, specifications, and practices.³ These industry standards are intended to ensure that all electric utilities deliver safe and reliable electrical power service to their customers. Noncompliance of any degree creates the potential for reprimands or penalties from the responsible administering bodies. NERC Reliability Standards are enforceable, and Dominion therefore updates its plant from time to time, as such industry standards so require.

¹ NERC is an industry association of electric utilities in North America that studies, develops and promotes universal reliability standards. See Photograph of SD-I, attached hereto as Exhibit A; Diagram of SD-I, attached hereto as Exhibit B.

² See Photograph of SD-II, attached hereto as Exhibit C; Diagram of SD-II, attached hereto as Exhibit D.

³ These standards include, among others, National Electric Safety Code ("NESC"), National Electric Code ("NEC"), and NERC Reliability Standards.

7. It is Dominion's practice to construct poles of appropriate height and strength to fulfill the needs of its core electric utility business. Dominion provides access to available space on its poles, but it does not routinely engineer poles with excess space for the sole benefit of communications attachers, or any other third parties. It is my understanding that Dominion is not, at any time, obligated to allow, or continue to maintain pole attachments by communications companies if doing so would interfere with Dominion's safe and reliable delivery of electric service, or cause Dominion's own facilities to be in violation of applicable safety and reliability codes, practices, or specifications. Dominion negotiates terms in its various pole license agreements to that end.

3601 Shore Drive (SD-I)

8. At SD-I, Dominion must increase the amount of clearance between its distribution pole and attached distribution line, and overhead transmission line.⁴ To establish the amount of clearance required by NERC Reliability Standards, Dominion must lower the electric distribution line now on the pole, and remove the top portion of the pole. Consequently, Cox's attachment must be lowered from its present location, to establish the required clearance between that attachment, and Dominion's electric distribution line.⁵ However, lowering Cox's attachment will violate ground clearance requirements. Therefore, Cox's attachment must be removed from the pole at SD-I to enable Dominion to proceed with the required work on its electric facilities.

⁴ See Exhibit B.

⁵ As is acknowledged in the Complaint, lowering the existing electric distribution line at SD-I will result in insufficient clearance between that line, and Cox's attachment, or if Cox lowers its attachment in turn, insufficient ground clearance.

3657 Shore Drive (SD-II)

9. At the present time, no pole exists at SD-II, and thus, Cox maintains no attachment at SD-II. Dominion plans to construct a new pole at this location, and in doing so, must maintain the required amount of clearance between the top of the new pole, and the overhead transmission lines at SD-II.⁶ The new pole will not be of sufficient height to support any communications attachment in addition to Dominion's electric distribution line. As such, in consideration of applicable safety and reliability standards, there will not be sufficient space for any attachment that Cox may request once the new pole and attendant facilities are installed at SD-II.

10. Dominion has notified Cox – and Cox has not disputed – that insufficient space will exist on the poles at the Shore Drive locations to maintain Cox's attachments going forward. The parties have discussed appropriate options for relocating Cox's communications cables now at the Shore Drive pole locations, and have identified undergrounding as the most cost-effective means of enabling Cox to maintain its presence on the current pole line.⁷

11. In contrast to rearrangements, and other make-ready work that pole owners and attachers routinely undertake to create additional space on an existing pole, undergrounding communications cables involves the construction of additional facilities that are entirely separate from the existing pole. These new underground facilities will be constructed for the sole purpose of maintaining communications cables in a location where pole attachments could not otherwise be accommodated.⁸

⁶ See Exhibit D.

⁷ At the December 16, 2014 executive-level meeting between Dominion and Cox, the parties also discussed the option of replacing the distribution poles at each of the Shore Drive pole locations with transmission-type poles. Dominion estimated that the cost of installing such poles would be \$60,000.00 per location. Dominion allocates the cost of replacing poles to the requesting attacher.

⁸ *Id.*

12. At the Shore Drive pole locations, the undergrounding process will likely include several of the following tasks, all of which must be performed by Cox: engineering, obtaining permissions from all affected landowners, boring, trenching, installing new conduit or ducts, removing and relocating Cox's communications cables from their current locations, and then establishing connections to Cox's above-ground network. In contrast to the existing Shore Drive facilities, which are subject to the parties' pole license Agreement, these new underground facilities, once constructed, will be owned and operated by Cox, and Dominion will not have access to them for any purpose.

13. Dominion repeatedly emphasized to Cox the time-sensitive nature of its need to adjust its electric distribution facilities at the Shore Drive pole locations before the end of the 2014 calendar year. Although Cox initially assured Dominion that it would remove and relocate its communications cable at the Shore Drive pole locations, it was not until the requested deadline had almost passed that Cox demanded full advance compensation, in the amount of \$43,251.89, to proceed.

14. On July 11, 2014, Dominion requested that Cox remove and relocate from SD-II its aerial communications cable traversing Shore Drive. This request indicated a completion deadline of October 4, 2014, and included remarks that the work specified was essential to Dominion installing new electric distribution facilities at SD-II. The work requested, including undergrounding, was previously discussed between construction planners for each of the parties.

15. On July 17, 2014, Dominion requested that Cox remove its attachment to the pole located at SD-I. This request specifically provided for Cox to complete this task by October 1, 2014, and provided notice to Cox that its timely completion of the removal work was essential to Dominion adjusting its electric distribution line before year end, as needed to conform to NERC

Reliability Standards. The work requested, including undergrounding, had been previously discussed between construction planners for each of the parties, and thus, Cox had more than sufficient time to comply with this request.

16. On October 1, 2014, Dominion received a demand for compensation, in advance, for the full cost of undergrounding Cox's communications cables at the Shore Drive pole locations.⁹

17. Based on this demand, Dominion understood that Cox would not cooperate in promptly completing the work requested—*unless and until* Dominion paid compensation to Cox not only for the removal of its communications cables from the Shore Drive pole locations but also for the construction of entirely new facilities for Cox's sole benefit.

18. Because of Cox's insistence on Dominion's payment of the full amount noted above prior to the removal of Cox's communications cables from the Shore Drive pole locations, Dominion has been unable to complete critical enhancements to its electric distribution facilities needed to ensure the safe and reliable operation of these facilities.

19. On November 20, 2014, counsel for Dominion proposed that the parties conduct executive-level discussions for the purpose of settlement prior to the initiation of any proceedings before the FCC or any other body.¹⁰ This executive-level meeting between Dominion and Cox occurred on December 16, 2014, which I attended on behalf of Dominion.

20. At the executive-level meeting, the parties considered that the relocation of its attachment now at SD-I, and Cox's aerial cable now traversing SD-II, to new underground

⁹ Complaint, attached Declaration of James Ruel, Exhibit 2 (Letter from Maria T. Browne, Davis Wright Tremaine to Kelly Mansfield, Dominion Virginia Power (Oct. 1, 2014)).

¹⁰ Complaint, attached Declaration of James Ruel, Exhibit 5 (Letter from Brett Heather Freedson, Eckert Seamans Cherin & Mellott, LLC to Maria T. Browne, Davis Wright Tremaine (Nov. 20, 2014)).

facilities would be the most cost-effective means of enabling Cox to maintain communications cables at the affected pole locations.¹¹

21. At this meeting, Cox also pledged that it would complete all work requested at the Shore Drive pole locations, before March 1, 2015. In response, Dominion agreed to reimburse Cox for such work, in an amount up to \$43,000.00, on the condition that Cox first obtain a final legal determination that Dominion is liable for the cost of constructing Cox's underground facilities for those communications cables displaced from the Shore Drive pole locations.

22. Based upon Cox's representations at the parties' executive-level meeting, Dominion also provided NERC with an anticipated completion deadline for the safety and reliability enhancements to Dominion's electric distribution lines.

I declare under penalty of perjury under the laws of the United States that foregoing is true and correct to the best of my knowledge.


Michael A. Graf

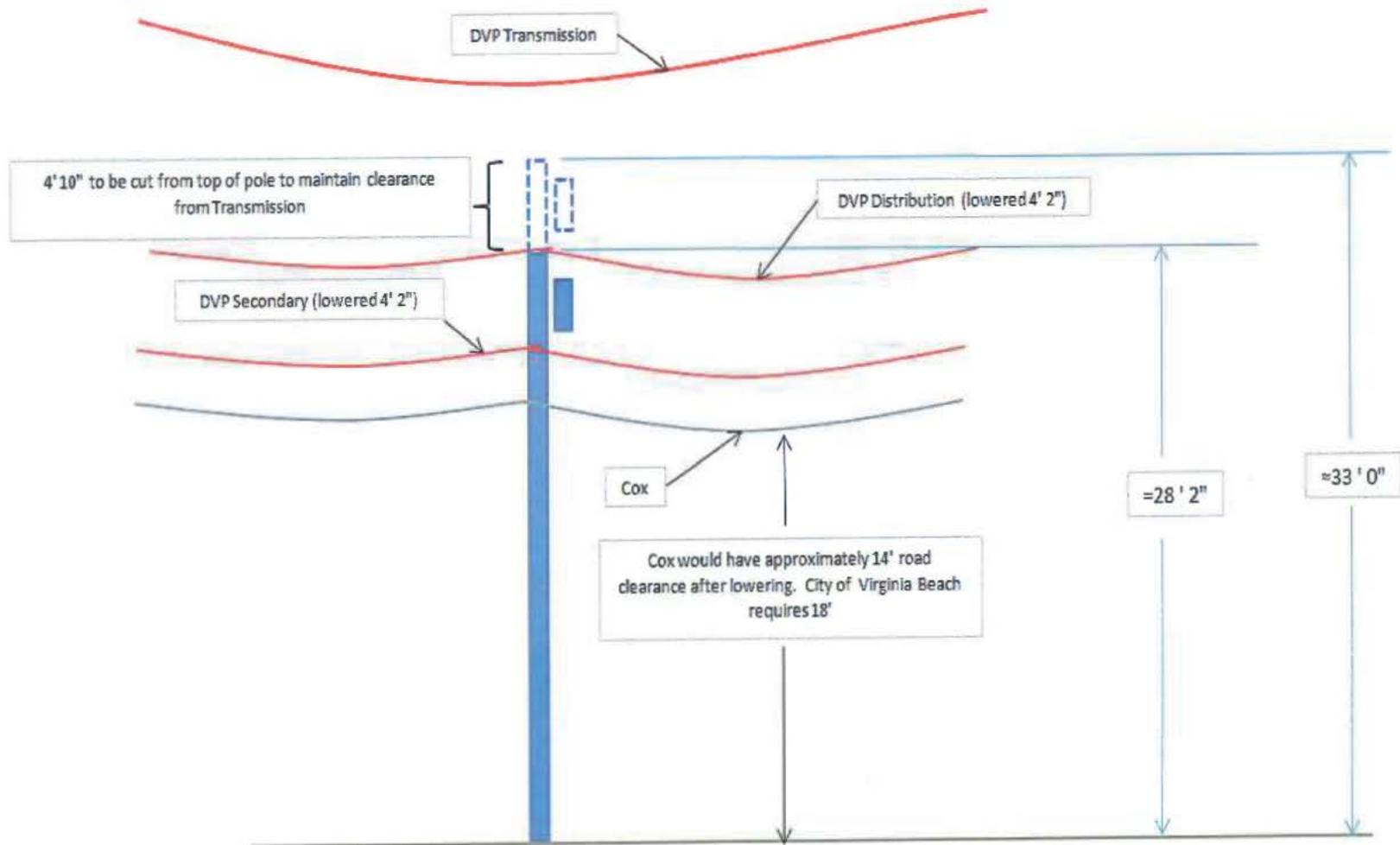
Dated: February 23, 2015

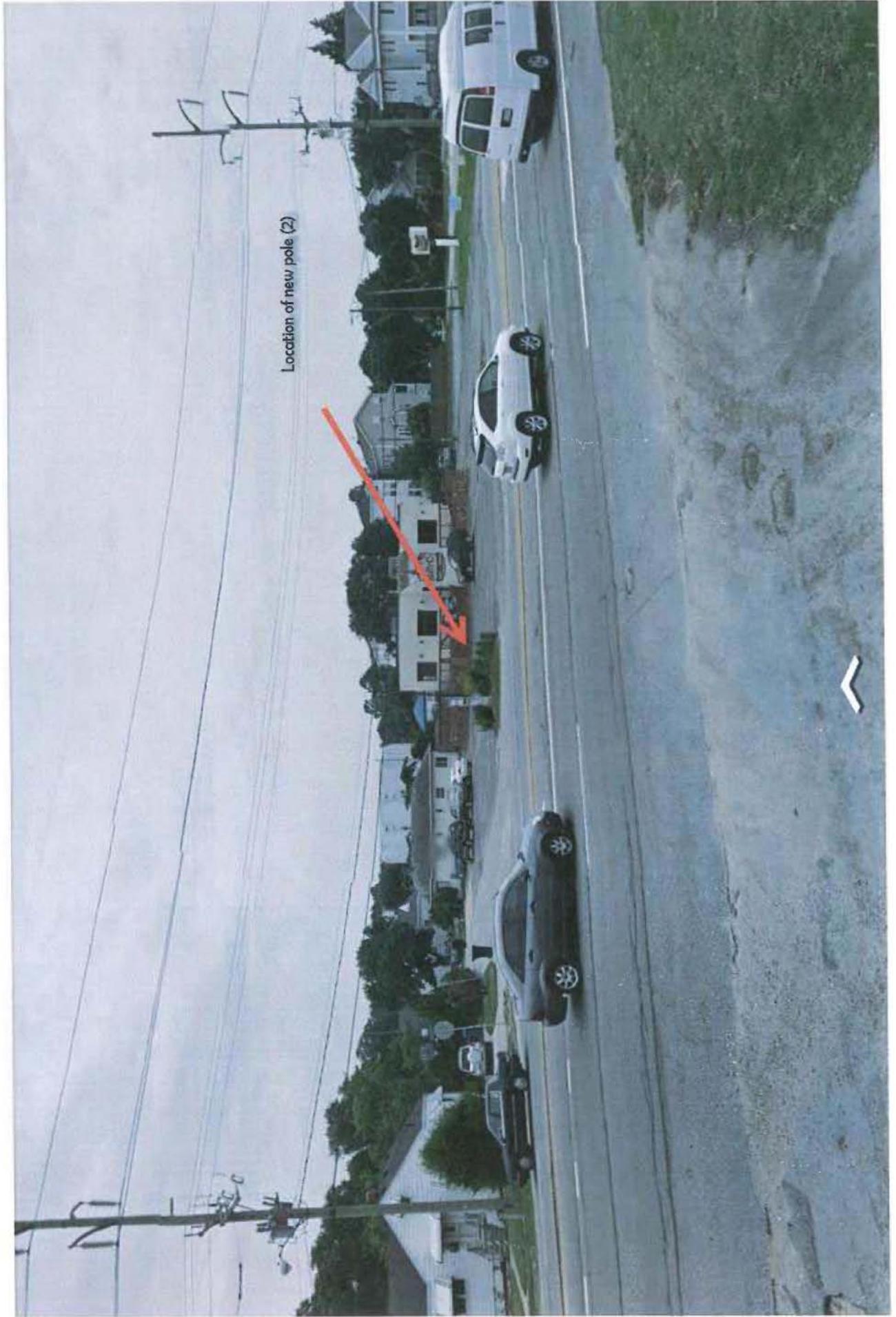
¹¹ See *supra* note 8.

SD-1



SD - I





SD-II

