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November 27, 2012

Via FedEx

Surface Transportation Board
395 E Street, SW
Washington, DC 20024

ENTERED
Office of Proceedings

NOV 28 2012

Part of
Public Record

Re: Petition of Norfolk Southern Railway Company for Declaratory Order
FD No. 35701

Dear Sir:

Enclosed please find for filing an original and ten copies of the Petition of Norfolk Southern Railway Company for Expedited Declaratory Order, along with our firm's check in the amount of \$1,400 to cover the filing fee.

As the certification states, we have provided a copy of this Petition to all interested parties. Also, please note that we are requesting expedited consideration of this Petition for the reasons stated therein.

If you have any questions or comments concerning this matter, please feel free to call.

FILED

NOV 28 2012

SURFACE
TRANSPORTATION BOARD

GAB:ceb
Enclosures

cc: John M. Scheib, Esquire

Sincerely,

Gary A. Bryant

FEE RECEIVED

NOV 28 2012

SURFACE
TRANSPORTATION BOARD

I-1137192.1
11/27/2012

Reply to Norfolk Office

EXPEDITED CONSIDERATION REQUESTED

233405

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Finance Docket No. 35701

**PETITION OF NORFOLK SOUTHERN RAILWAY COMPANY
FOR EXPEDITED DECLARATORY ORDER**

Dated: November 27, 2012

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Office of Proceedings

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JOHN M. SCHEIB
NORFOLK SOUTHERN RAILWAY
COMPANY
THREE COMMERCIAL PLACE
NORFOLK, VIRGINIA 23510
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ATTORNEYS FOR NORFOLK
SOUTHERN RAILWAY COMPANY

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TRANSPORTATION BOARD

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35701



**PETITION OF NORFOLK SOUTHERN RAILWAY COMPANY
FOR EXPEDITED DECLARATORY ORDER**

Norfolk Southern Railway Company (“Norfolk Southern” or “the Railroad”), by counsel, hereby petitions the Surface Transportation Board (“STB”) for a declaratory order finding that eighteen inverse condemnation suits seeking nuisance damages resulting from the “noise, vibration, and discharges” from a rail line that has been operating for over a hundred years is a “remedy provided under... state law” preempted by the Interstate Commerce Commission Termination Act, 49 U.S.C. Section 10501(b).

Preliminary Statement

This matter involves eighteen separate suits filed in the Circuit Court of Roanoke County, Virginia, by various plaintiffs against Norfolk Southern and Appalachian Power Company (“APCO”). True and accurate copies of the suits are attached hereto, collectively, as Exhibit 1. Plaintiffs sued Norfolk Southern and APCO asking the court to declare that a “taking” or “damaging” has occurred that would allow a claim for “just compensation” under the eminent domain clause of the Virginia Constitution. As against the Railroad, the suits allege that “[t]he operation of Norfolk Southern’s rail line now constitutes a nuisance” and states that “noise, vibration, and discharges” have damaged plaintiffs’ properties. (Compl. ¶ 16). The rail line has been in place for over 100 years.

The Plaintiffs’ entire theory of recovery against Norfolk Southern (which Norfolk Southern disputes) is that, while the operation of the rail line may have created noise, vibration

and dust for more than 100 years, it lowered the value of the Plaintiffs' property when defendant APCO removed trees between the rail line and the Plaintiffs' property in order to install power lines. The removal of these trees, so the theory goes, created a cause of action against the Railroad for inverse condemnation damages by virtue of the nuisance resulting from the operation of the rail line, even though the suits do not allege that the Railroad owns the property on which the trees grew or had any involvement in the removal of the trees, and even though the Railroad has operated its rail line in the same proper manner since the line was constructed in the 1890s, long before the Plaintiffs acquired their property.

Whether labeled "inverse condemnation" or nuisance claims, these suits arise under state law and seek damages resulting from the lawful operation of a rail line. Accordingly, the suits are preempted by ICCTA.

Factual Background

The Rail Line at Issue

In 1890 Norfolk Southern's predecessor condemned the right of way on which it now operates the rail line about which the Plaintiffs complain. Attached hereto as Exhibit 2 are true and accurate copies of the condemnation orders associated with the proceeding. At the time of the condemnation proceedings, Virginia's Constitution authorized a recovery when property is "taken" for a public purpose. The Virginia Constitution did not authorize a recovery when property was merely "damaged" as a result of the use of property for a public purpose.

These condemnation orders make clear that, notwithstanding the fact that Virginia did not recognize an inverse condemnation claim for damages at the time, the condemnation orders included an award for damages based on the residual effects of the proposed construction of the rail line.

The condemnation orders provide that title to the land condemned was, by virtue of the

orders, “vested absolutely” in the Railroad. Between the time of the condemnation and the turn of the century, Norfolk Southern constructed a rail line and began its operation. At the time Norfolk Southern began operating the rail line, none of the Plaintiffs were even born, much less owned property adjacent to or near the operating rail line.

In 1902, Virginia amended its Constitution to require just compensation not only for taking property, but also for damaging property. The relevant provision now reads “[T]he General Assembly shall not pass any law... whereby private property shall be taken... or damaged for public uses, without just compensation....” Va. Const. Art. I, § 11 (emphasis added). Notably, the Plaintiffs in this case assert their “damage” under this section.

The rail line at issue is, and always has been, an active rail line of Norfolk Southern or its predecessors.

The Plaintiffs’ Property

The rail line at issue has operated continuously since the 1890s. Since that time, there has been development in the area, including the development of the neighborhood in which all of the Plaintiffs now reside. Unless these Plaintiffs are more than 120 years old, they cannot contend that they owned property at any time prior to the construction and operation of the rail line.

The property of the individual Plaintiffs is reflected in the true and accurate copies of maps attached here as Exhibits 3 and 4. As the maps clearly show, none of the Plaintiffs own property adjacent to Norfolk Southern’s rail line. Instead, the land on which APCO erected its power line is adjacent to Norfolk Southern’s right of way, creating a buffer between the Railroad and any of the Plaintiffs’ property. As the maps reflect, some of the Plaintiffs own property adjacent to APCO’s property, and some own property that is not adjacent to APCO’s property, but separated from the Railroad by both APCO’s property, the property of other Plaintiffs and a

public road. The property of one Plaintiff is separated even further, as reflected in the map attached as Exhibit 4. All, however, have filed mirror suits against the Railroad.

The Allegations Against Norfolk Southern

The suits allege that Norfolk Southern is a public service corporation and that the legislature has delegated to Norfolk Southern the power of eminent domain and that Norfolk Southern operates a rail line adjacent to property owned by APCO and that the rail line was constructed for a public purpose. (Compl. ¶¶ 4 and 17).

The suits further allege that the rail line constitutes a nuisance by virtue of “noise and vibration as well as the discharge of smoke, dust, dirt and other particulates...” and that this alleged nuisance interferes with the use and enjoyment of their property (Compl. ¶¶ 14 and 15).

The suits do not allege an interest in the property on which APCO erected its transmission lines and do not allege an interest in the trees which were growing on APCO’s property, and which allegedly created a “buffer” for the Plaintiffs. Nor do the suits allege negligence against either APCO or Norfolk Southern.

The Damages Claimed

The suits allege that, with APCO’s removal of the trees, “... the rail line operation generates and disburses: coal dust that now trespasses on owner’s property, vibrations that now shake the owner’s home, noise that now enters the owner’s home substantially interfering with its use as a home, and other deleterious effects on the owner’s home.” (Compl. ¶ 14). The suit further alleges that the operation of the rail line discharges “smoke, dust, dirt and other particulates from the rail line onto the owner’s property” and that the operation of the rail line “now constitutes a nuisance.” (Compl. ¶¶ 15-16).

Specifically, the Plaintiffs insist that their property is now “less valuable, marketable and desirable” and ask the court to enter an order declaring that APCO and Norfolk Southern “have

taken and/or damaged the property of the owners” within the meaning of the Constitution of Virginia, and that a panel of commissioners be impaneled for the purpose of “determining and awarding just compensation....” The suits also seek other damages pursuant to the inverse condemnation provision of the Virginia Code, including attorney’s fees, costs and expert fees and “other disbursements and expenses....” (Complaint, unnumbered final paragraph).

Procedural Posture

Under Virginia law, defendants are authorized to “demurrer” to suits if they fail to state a cause of action. Upon service of the eighteen suits attached hereto, Norfolk Southern demurred on numerous grounds, including ICCTA preemption. The matter was fully briefed by the parties. In response to Norfolk Southern’s contention that the suits were preempted, Plaintiffs argued that ICCTA preemption has no application to inverse condemnation claims, citing the STB’s decision in *Mark Lange*, STB Finance Docket No. 35037 (Jan. 24, 2008). Norfolk Southern replied that *Mark Lange* supports its position, as the STB preempted all state law claims, leaving only an inverse condemnation claim as a result of a *federal taking*, which the United States Constitution prohibits without just compensation. The eighteen suits at issue do not involve a federal taking, but allege facts amounting to nothing more than a nuisance claim.

The matter was scheduled for oral argument on October 29, 2012 before the Honorable Robert P. Doherty, Jr. Attached hereto as Exhibit 5 is a true and accurate copy of the entire transcript from the hearing, which lasted only a few minutes, as transcribed by the court reporter. As the transcript reflects, Judge Doherty expressed concern over his ability to timely rule on the matter in light of a heavy workload coupled with his pending retirement in March of 2013.

THE COURT: I want to interject, I brought this out to show everybody. I am scheduled to retire March 1st. Those are the opinions I have got to write right now. Starting today I am going to start carrying that stuff home at night. I just wanted to let you know in advance if you get a chance to look at that.

...

I have to write those opinions because I don't know the answer. I have to look them up, you all can take a look at that. If you can picture a bottom line that is where your case is.

Hearing Transcript at 6. The clear implication from Judge Doherty is that it would be some time before he could rule on the pending Demurrers.

Later in the hearing, Judge Doherty suggested that the parties would be better served by submitting the ICCTA preemption issue to the Surface Transportation Board. During argument on the ICCTA preemption issue, the Court interrupted:

THE COURT: Let me interrupt you?

Mr. Bryant: Sure.

THE COURT: If that is the case, why couldn't you remove this to the Surface Transportation Board....

THE COURT: The reason I am raising this is because I have shown you my schedule....

THE COURT: We are talking about not a couple of months, but a long time...

And if the Surface Transportation Board is a lot faster, there is an excellent chance that I could end up in something like this and not get it done before I retire and that is the reason I ask.

Hearing Transcript at 14-16. Counsel for Norfolk Southern made clear that parties often ask state courts to stay proceedings so that they can petition the Surface Transportation Board, and that Norfolk Southern was comfortable taking that approach. Hearing Transcript at 17.

Thereafter, the court recessed so the parties could discuss the matter.

Ultimately, the parties agreed that Norfolk Southern could file a petition with the STB, and that the state court suits would be transferred to the Honorable Clifford R. Weckstein, and

that a hearing on the pending demurrers would be rescheduled for December 10, 2012, and an agreed order to that effect was entered by the court in all eighteen cases on November 14, 2012. A true and accurate sample copy of the Order is attached as Exhibit 6. In light of Judge Doherty's suggestion, Norfolk Southern files this Petition. In the interest of judicial efficiency, Norfolk Southern has filed a motion asking the Roanoke County Circuit Court to stay its consideration of the ICCTA preemption defense, deferring to the Surface Transportation Board on the issue.

Argument

In summary, Norfolk Southern maintains that these suits represent a "remedy under state law" directly aimed at transportation by a rail carrier. Each suit amounts to a claim for damages directly resulting from an alleged "nuisance" created by virtue of Norfolk Southern's operation of its rail line. ICCTA makes clear that the Surface Transportation Board has exclusive jurisdiction over the operation of rail lines and that ICCTA preempts any and all federal and state remedies directed at rail transportation.

If a remedy is directed at rail transportation, it is automatically preempted under ICCTA with one exception. As ICCTA was passed pursuant to the authority of the Supremacy Clause, it is the law of the land and can preempt any other federal law and all state and local laws. But neither ICCTA nor any other federal statute can preempt remedies rooted in protections afforded by the United States Constitution itself. For this reason, inverse condemnation suits seeking damages for a *federal taking* are not preempted under ICCTA, as the right to compensation is guaranteed under the United States Constitution. But these suits do not and cannot allege a federal taking. They are remedies arising under state law seeking nuisance damages and are, therefore, preempted by ICCTA.

A. ICCTA PREEMPTION GENERALLY

The Supremacy Clause of the United States Constitution states that “the laws of the United States . . . shall be the supreme law of the land . . . any thing in the constitution or laws of any state to the contrary notwithstanding.” U.S. Const. art. VI, cl. 2. “[T]he doctrine of preemption — rooted in the Constitution's Supremacy Clause — permits Congress to expressly displace state or local law in any given field.” *Norfolk S. Ry. Co. v. City of Alexandria*, 608 F.3d 150, 156 (4th Cir. 2010) (internal citation omitted). When Congress expressly displaces state or local law in a given field, preemption is mandatory. *E.g., English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (“Preemption fundamentally is a question of congressional intent, and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.”) (citation omitted); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1983) (“Pre-emption . . . is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.”) (citation omitted); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (“[W]hen Congress has unmistakably ordained that its enactments alone are to regulate a part of commerce, state laws regulating that aspect of commerce must fall.”) (citation omitted); *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 334 (4th Cir. 1997) (same).

Enacting ICCTA, Congress has expressly displaced remedies under state law that regulate rail transportation. Specifically, 49 U.S.C. Section 10501(b) states, in pertinent part:

[R]emedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under federal or state law.

Courts have construed “remedies” for purpose of ICCTA preemption to include any and all claims for damages, regardless of the theory, including claims for damages arising out of an alleged nuisance. *See Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1069 (11th Cir. 2010) (“[T]he language of section 10501(b) plainly conveys Congress's intent to preempt all state law claims

pertaining to the operation . . . of a side track. Accordingly, we hold that the [plaintiffs'] state law nuisance claim for monetary relief is expressly preempted by the ICCTA.”).

ICCTA’s preemption of damages claims rests on the fact that a claim for damages has the same effect as imposing unreasonable restrictions on rail transportation through laws or regulations. *See, e.g., Suchon v. Wis. Cent. Ltd.*, No. 04-C-0379-C, 2005 WL 568057, at *4 (W.D. Wis. Feb. 23, 2005) (“Allowing plaintiff to obtain a monetary . . . remedy . . . is not significantly different from allowing the state to impose restrictions on defendant through laws and regulations.”); *Guckenberg v. Wis. Cent. Ltd.*, 178 F. Supp. 2d 954, 958 (E.D. Wis. 2001) (“Indeed, ‘state regulation can be as effectively exerted through an award of damages as through some form of preventive relief.’”) (quoting *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521 (1992)). Accordingly, under ICCTA, a plaintiff is preempted from accomplishing in a suit for damages that which a state or locality is preempted from accomplishing through regulation.

The STB has specifically held that condemnation proceedings are among those remedies preempted by ICCTA, as “[c]ondemnation can be a form of regulation, and using state imminent domain law to condemn railroad property or facilities for another use that would conflict with the rail use ‘is exercising control--the most extreme type of control--over railroad transportation as defined in [49 U.S.C.] 10102(9).’” *Norfolk Southern Railway Company and the Alabama Great Southern Railway Company--Petition for Declaratory Order*, STB Finance Docket No. 35196 (Release date March 1, 2010). If condemnation proceedings that interfere with rail transportation are “state law remedies” preempted by ICCTA, then certainly inverse condemnation proceedings that unreasonably interfere with interstate commerce are preempted as well.

B. THE PLAINTIFFS’ CLAIMS ARE PREEMPTED UNDER ICCTA

The suits allege that “[t]he operation of Norfolk Southern’s rail line now constitutes a

nuisance,” and that “noise, vibration, and discharges” have damaged the Plaintiffs’ property. (Compl. ¶ 16). Aside from the Railroad’s “operation” of its rail line, the suits identify no other act or omission contributing to the alleged nuisance. Operating a rail line is the very essence of “transportation by rail” as defined in the Interstate Commerce Commission Termination Act (“ICCTA”).¹ ICCTA created the STB and granted it exclusive jurisdiction over transportation by rail carriers, specifically preempting any and all remedies, both federal and state, in any way associated with such transportation. 49 U.S.C. § 10501(b).² Because the suits allege (1) a state law remedy seeking damages resulting from (2) transportation by rail, the Plaintiffs’ claims are preempted by ICCTA.

1. These Suits Seek a State Law Remedy

a. All State Law Remedies are Preempted

The gravamen of Plaintiffs’ claim is that Norfolk Southern’s rail line, by generating

¹ ICCTA defines transportation to include:

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property[.]

49 U.S.C. 10102(9).

² Specifically, ICCTA reads as follows:

(b) The jurisdiction of the Board over -

(1) Transportation by rail carriers, and the remedies provided in this part with respect to... routes, service and facilities of such carriers; and

(2) The construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under federal or state law.

49 U.S.C. § 10501(b).

noise, vibrations, and discharges, constitutes a nuisance, and that Plaintiffs are entitled to a monetary remedy for that nuisance under the eminent domain clause of the Virginia Constitution.³ The inverse condemnation claims are a “state law remedy.” Virginia’s Constitution provides for a right to compensation where an entity vested with the power of condemnation either physically takes a plaintiff’s property or damages it in some way that is recognized under the common law, such as by creating a nuisance. Va. Const. art. I, § 11.⁴ Accordingly, even assuming, *arguendo*, that Plaintiffs could state valid inverse condemnation claims,⁵ they are subject to ICCTA preemption as they are state law claims.

Which state law theory the Plaintiffs proceed under, whether it be inverse condemnation under the Virginia Constitution, common law nuisance, or some other theory of recovery, is irrelevant; preemption still applies. U.S. Const. art. VI, cl. 2 (“The law of the United States... shall be the supreme law of the land... *anything* in the Constitution or laws of any state to the contrary notwithstanding.”) (emphasis added). *Cf. Kiser v. CSX Real Prop., Inc.*, No. 8:07-cv-1266-T-24-EAJ, 2008 WL 4866024 (M.D. Fla. Nov. 7, 2008) (“All state-born attacks aimed at the target, no matter the weapon used, are rebuffed by the shield of federal supremacy.”).

³ Specifically, Plaintiffs allege that by operating its rail line, Norfolk Southern has “taken and/or damaged” Plaintiffs’ property, “within the meaning of Article I, Section 11 of the Constitution of Virginia” because “noise, vibration, and discharges” from the rail line now “constitute a nuisance” and have “decreased [the] market value” of Plaintiffs’ property. (Compl. ¶¶ 16 & final, un-numbered paragraph.)

⁴ “Damaged” under the applicable clause of the Virginia Constitution means damaged in some way that would, if inflicted by a private actor, be compensable under the common law. *E.g., City of Lynchburg v. Peters*, 156 Va. 40, 49 (1931); *Lambert v. City of Norfolk*, 108 Va. 259, 262 (1908) (holding that the plaintiff’s damages were not compensable under this clause because “[s]uch considerations as constitute the basis of the plaintiff’s claim were not recognized at common law as ground for a recovery of damages.”).

⁵ Norfolk Southern does not concede that the suits allege a valid claim for inverse condemnation under Virginia law. Norfolk Southern has filed a demurrer to the Plaintiffs’ Complaints which is scheduled for hearing on December 10, 2012, at which Norfolk Southern will argue that the suits fail to state a cause of action under Virginia law.

b. State Law Inverse Condemnation Claims Are No Exception

Plaintiffs argue that ICCTA does not preempt inverse condemnation claims.⁶ There is no such rule. ICCTA is a federal statute, and under the Supremacy Clause, no state law is immune to preemption by a federal statute, even if it arises under a state constitution. U.S. Const. Art. VI, cl. 2 (“[T]he Laws of the United States . . . shall be the supreme law of the land . . . *anything in the constitution or laws of any state to the contrary notwithstanding.*”) (emphasis added). Furthermore, where Congress has expressly displaced state law in a given field, as it has with ICCTA in the field of rail transportation, preemption is mandatory. *E.g., Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 95 (1983) (“Pre-emption . . . is compelled whether Congress’ command is explicitly stated in the statute’s language or implicitly contained in its structure and purpose.”)(citation omitted).

Plaintiffs, in attempting to circumvent mandatory preemption under ICCTA, rely exclusively on *Mark Lange*, STB Finance Docket NO. 35037 (Jan. 24, 2008). Their reliance is misplaced. In the *Mark Lange* case, the STB held that each of Mr. Lange’s state law claims *were* preempted. The only claim the STB held not preempted was Mr. Lange’s physical taking claim, which the STB specifically noted is guaranteed under the 5th and 14th Amendments to the United States Constitution.⁷ Regarding this claim, the STB reached the unsurprising conclusion that ICCTA, which is a federal statute, does not and cannot preempt claims asserting rights guaranteed under the United States Constitution. This proposition has been settled for more than

⁶ Norfolk Southern originally demurred to the Plaintiffs’ Complaints, arguing to the circuit court, *inter alia*, the claims are barred as preempted under ICCTA. As discussed *supra*, during oral argument the judge, whose retirement was pending, suggested that Norfolk Southern submit the ICCTA preemption issue to the Surface Transportation Board, and that the parties transfer the case to another judge.

⁷ The railroad physically invaded Mr. Lange’s property by building a fence across it, literally cutting off Mr. Lange’s access to part of his property, and then using that part to store railroad equipment.

200 years. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176-77 (1803) (“[A]n act of the legislature, repugnant to the constitution, is void.”).

Plaintiffs’ claims are quite different from Mr. Lange’s. Unlike Mr. Lange, Plaintiffs have failed to allege facts amounting to a physical taking of their property and assert no right protected by the United States Constitution. Their claim is that noise, vibrations, and discharges from Norfolk Southern’s trains “damage and/or take” their property. The United States Supreme Court has specifically held that this type of damage does not constitute a taking under the federal constitution. *Richards v. Wash. Terminal Co.*, 233 U.S. 546, 553-54 (1914). The *Washington Terminal* case involved damages “resulting from the maintenance of an alleged nuisance by defendant by means of the operation of a railroad and tunnel upon its own lands near to, but not adjoining, those of the plaintiff.” *Id.* at 548. Thus, the claim before the Supreme Court in *Washington Terminal* involved damages *identical* to those claimed by the Plaintiffs here. The Court then discussed the railroad’s authority to condemn property for the specific purpose of constructing a rail line, noting that the United States Constitution required compensation for any property “taken” for this public purpose. *Id.* at 552-53.

The Court then framed the pivotal issue: whether a “taking” exists as a result of damage to adjacent property by virtue of the smoke, vibration and similar annoyances incidental to the operation of a rail line. *Id.* at 554. The Court concluded as follows:

Any diminution in the value of property not directly invaded or peculiarly affected, but sharing in the common burden of the incidental damages arising from the legalized nuisance, is held not to be a “taking” within the constitutional provision.

Id. In short, the Supreme Court of the United States held that the exact type of damages alleged in the instant case - a nuisance resulting from the operation of a rail line on nearby property - does not amount to a “taking” under the United States Constitution.

These eighteen suits *do not* allege that the Railroad took the Plaintiffs' property and used it for any purpose at all. They allege nothing more than nuisance damages resulting from the proper operation of a railroad.⁸ Such a claim is the quintessential "state law remedy" directed at rail transportation that ICCTA preempts.

An inverse condemnation proceeding is no different than any other state law remedy. If an inverse condemnation suit seeking nuisance damages is aimed at transportation by a rail carrier, it is preempted. *See Norfolk Southern Railway Company and the Alabama Great Southern Railway Company--Petition for Declaratory Order*, STB Finance Docket No. 35196 Released March 1, 2010 (finding that a condemnation proceeding pursuant to state eminent domain law is preempted under ICCTA when the proceeding unreasonably interferes with how the railroad operates its trains and conducts its rail transportation activities).

2. The State Law Remedy Is Directly Related to Transportation by Rail Carrier

The test for whether ICCTA preempts state law claims is whether the claim is directed at "transportation by rail carrier." If so, it unreasonably interferes with interstate commerce and is preempted. In the context of nuisance and related claims, this standard is met whenever the complained of activity is directly related to transportation by rail carrier. *Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1069 (11th Cir. 2010). Norfolk Southern's "operation" of its rail line clearly is "transportation by rail carrier."

First, there is no dispute that Norfolk Southern is a rail carrier as defined in 49 USC 10102(5). Second, the activity at issue clearly is "transportation" as defined at 49 USC 10102(9). Congress broadly defined the term "transportation" to include "a locomotive, car,

⁸ The suits not only fail to allege conduct amounting to a federal taking by the Railroad, they also fail to allege conduct amounting to a taking by co-defendant APCO. Removing trees on your own property cannot possibly amount to a federal taking. Nor does the erection of power lines, regardless of whether they diminish the value of adjacent property. *See Byler v. Va. Elec. & Power Co.*, ___ Va. ___, 731 S.E.2d 916 (2012) (a copy attached as Exhibit 7).

vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail” and “service related to that movement.” 49 USC 10102(9). The only activity Plaintiffs allege Norfolk Southern to have engaged in is operating a rail line. (Compl. ¶ 13.) (“Norfolk Southern operates a rail line . . .”). Operating a rail line is the quintessential function of a railroad; it is the sheer essence of what a railroad does. Norfolk Southern’s operation of the rail line at issue is unquestionably covered by this broad definition of transportation. The rail line at issue is, and always has been, an active rail line.

Where nuisance-related claims arise out of activity directly related to transportation by rail carrier, the courts have consistently held that ICCTA preemption applies. *See e.g., Pace v. CSX Transp., Inc.*, 613 F.3d 1066 (11th Cir. 2010). In *Pace*, the plaintiffs sued a railroad for nuisance because the railroad had built a new sidetrack near their property, and the new sidetrack “caused an increase in noise and smoke due to the traffic on the track and made their land virtually unusable.” *Id.* at 1068. The railroad moved for summary judgment on the ground that ICCTA preempted the plaintiffs’ claim. *Id.* The district court granted summary judgment, and the 11th Circuit affirmed:

[S]ection 10501(b) plainly conveys Congress’s intent to preempt all state law claims pertaining to the operation or construction of a side track. Accordingly, we hold that the Pace family’s state law nuisance claim. . . is expressly preempted by ICCTA.”

Id. at 1069.

Courts have consistently held that alleged nuisance claims arising out of rail transportation are preempted under ICCTA. *See, e.g., Smith v. CSX Transp., Inc.*, 381 Fed. App’x 885 (11th Cir. 2010) (per curiam) (affirming the district court’s grant of summary judgment on ICCTA preemption grounds where the plaintiff complained that the railroad’s

operation of a sidetrack near his home constituted a nuisance); *Kiser v. CSX Real Prop., Inc.*, No. 8:07-cv-1266-T-24-EAJ, 2008 WL 4866024 (M.D. Fla. Nov. 7, 2008) (granting summary judgment to the defendant on ICCTA preemption grounds where the plaintiff complained that the construction of an intermodal railway facility would constitute a nuisance to neighboring property owners by flooding them with light, vibrations, and noise); *Suchon v. Wis. Cent. Ltd.*, No. 04-C-0379-C, 2005 WL 568057, at *4 (W.D. Wis. Feb. 23, 2005) (holding that “[ICCTA] preempts Wisconsin nuisance law *expressly*, when an effort is made to apply the law to tracks used in providing rail transportation service”) (emphasis in original); *Maynard v. CSX Transp., Inc.*, 360 F. Supp. 2d 836 (E.D. Ky. 2004) (granting the railroad’s motion for summary judgment on the ground that ICCTA preempted the plaintiff’s claim that the railroad’s tracks created a nuisance by blocking drainage and causing water to pool on the plaintiff’s property); *Guckenberg v. Wis. Cent. Ltd.*, 178 F. Supp. 2d 954 (E.D. Wis. 2001) (granting the railroad’s motion for summary judgment on the ground that ICCTA preempted the plaintiff’s claim that traffic on the railroad’s tracks constituted a nuisance because of the noise it created); *cf. Pere Marquette Hotel Partners, L.L.C. v. United States*, No. CIV.A.09-5921, 2010 WL 925297 (E.D. La. Mar. 10, 2010) (granting the railroad’s motion to dismiss for failure to state a claim on the ground that ICCTA preempted the plaintiff’s claim that the railroad’s negligence in the design of its rail beds caused flooding during Hurricane Katrina); *In re Katrina Canal Breaches Consol. Litig.*, No. 05-4182, 2009 WL 224072 (E.D. La. Jan. 26, 2009) (same); *City of Cayce v. Norfolk S. Ry. Co.*, 706 S.E.2d 6 (S.C. 2011) (holding that ICCTA preempted a city anti-nuisance ordinance under which the railroad would have been required to pay fines and remove rust and graffiti from a railroad overpass).

As long as the activity is related to rail transportation, preemption applies. For example, if a railroad’s tracks contribute to flooding on a plaintiff’s property, the plaintiff’s claim would

be preempted by ICCTA, regardless of the theory of recovery because railroad tracks are directly related to transportation by rail. *See, e.g., Pere Marquette Hotel Partners, L.L.C. v. United States*, No. 09-5921, 2010 WL 925297 (E.D. La. Mar. 10, 2010) (negligence); *Maynard v. CSX Transp., Inc.*, 360 F. Supp. 2d 836, 842 (E.D. Ky. 2004) (nuisance and negligence). Similarly, where a plaintiff complains of noise and vibrations from a railroad operation, ICCTA preempts his claim regardless of his theory of recovery. *See, e.g., Rushing v. Kansas City S. Ry. Co.*, 194 F. Supp. 2d 493, 499-501 (S.D. Miss. 2001) (applying the same analysis to the plaintiffs' nuisance and negligence claims arising out of a noisy switching station). The same analysis is appropriate in the instant case, where Plaintiffs seek monetary compensation for a nuisance under the eminent domain clause of the Virginia Constitution. (Compl. ¶¶ 16 & final, un-numbered paragraph.)⁹

3. State Law Nuisance Claims Survive Preemption Only When They Are Aimed At Activity Other Than Rail Transportation

In the few instances where courts have held nuisance claims against railroads are not preempted, the claims arose out of activity *other than* transportation by a rail carrier. In *Emerson v. Kansas City Southern Railway Co.*, 503 F.3d 1126, 1129 (10th Cir. 2007), for example, the plaintiffs alleged that the railroad created a nuisance by improperly disposing of railroad ties and vegetation debris in a drainage ditch. The build-up of this debris in the drainage ditch led to flooding on the plaintiffs' property. *Id.* The court held that ICCTA did not preempt this claim because maintenance of the ditch was not directly related to rail transportation. *Id.* at 1133.

⁹ Note that federal law preempts state constitutional provisions to the exact same extent that it preempts state statutes and common law. U.S. Const. art. VI, cl.2 (“[T]he laws of the United States . . . shall be the supreme law of the land . . . any thing in the constitution or laws of any state to the contrary notwithstanding.”) (emphasis added).

The court in *Rushing v. Kansas City Southern Railway Co.*, 194 F. Supp. 2d 493 (S.D. Miss. 2001), reached a similar conclusion, and reflects the distinction between claims arising out of rail transportation and claims arising out of other activity. *Rushing* involved a noisy railroad switching station and a twelve foot earthen berm that the railroad had built to reduce noise. *Id.* at 496. The court dismissed the plaintiffs' noise and vibration nuisance claim on ICCTA preemption grounds but denied the railroad's motion to dismiss the part of the plaintiffs' claim that alleged that the berm had caused water to pool on the plaintiffs' property. *Id.* The court held that, unlike the operation of a switching station which was directly related to rail transportation, the construction of a sound reducing berm was not necessary for rail transportation. *Id.*

C. PREEMPTION OF PLAINTIFFS' CLAIM IS GOOD POLICY

Although the law on this matter speaks for itself, and although the matter before the STB represents as clear-cut a case for preemption under ICCTA as one could imagine, it is nevertheless worthwhile to review why ICCTA preemption is good policy. Congress's purpose in passing ICCTA was to reduce regulatory barriers in the railroad industry by establishing an exclusive federal regulatory scheme. *See, e.g., Cedarapids, Inc. v. Chicago, Cent. & Pac. R. Co.*, 265 F. Supp. 2d 1005, 1011 (N.D. Iowa 2003) ("Congress intended for the ICCTA to significantly reduce the regulation of such industries Congress sought to federalize many aspects of railway regulation that previously had been reserved for the states in an effort to ensure the success of [its] attempt to deregulate and thereby revitalize the industry."). *See also* 49 U.S.C. § 10101 ("In regulating the railroad industry, it is the policy of the United States Government . . . (7) to reduce regulatory barriers to entry into and exit from the industry.") If ICCTA did not preempt state law nuisance-related claims, these claims would have the effect of regulating railroads and thereby thwarting the exclusivity of the federal regulatory scheme. *See,*

e.g., A&W Props., Inc. v. Kansas City S. Ry. Co., 200 S.W.3d 342, 349 (Tex. Ct. App. 2006) (“[W]hen a state requires a railroad to pay damages to a civil litigant for a claim related to the railroad’s operations, that claim is the equivalent of state regulation of the railroad.”). *Accord Guckenberg v. Wis. Cent. Ltd.*, 178 F. Supp. 2d 954, 958 (E.D. Wis. 2001) (“Indeed, ‘state regulation can be as effectively exerted through an award of damages as through some form of preventive relief.’”) (quoting *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521 (1992)).

If these suits are allowed to proceed, the implication on the operation of a rail line could not be overstated. In essence, every nuisance case which is now preempted by ICCTA could somehow be revived if only the state legislature would add a provision to its inverse condemnation law allowing for a damages claim. Even more alarming, there is little or nothing a railroad could do to protect itself from suit. Here, the Railroad is facing eighteen separate lawsuits, not a single one of which involves property taken by the Railroad. In fact, not a single case involves property that is even adjacent to the Railroad. As the map attached as Exhibit 3 reflects, eight suits involve property adjacent to the power company’s easement, only six of which are adjacent to property on which trees were removed. Another four suits involve property across the street in the neighborhood, separated from the rail line not only by APCO’s property, but also by the property of other Plaintiffs and a public road. There are six suits involving property even deeper in the neighborhood. Under the theory of these cases, every single plaintiff who can claim an “increase” in noise, dust or vibration by virtue of the removal of the tree barrier has a cause of action against the Railroad for nuisance damages.

While the Plaintiffs may argue that the facts of this case are unique in that it involves APCO’s removal of a tree barrier, APCO’s involvement in the matter is largely irrelevant. Under the Plaintiffs’ theory, they would have an inverse condemnation cause of action for nuisance damages whenever any “barrier” is removed by a third party. In order to avoid

nuisance-related claims for noise, vibration, and discharges railroads would have to condemn ever wider rights of way and avoid operating in densely populated areas. Even when the Railroad builds through a completely deserted area, the suits could still come if (as is the case here) plaintiffs purchase property in neighborhoods that develop near a railroad line and then claim inverse condemnation “nuisance” damages when someone removes anything that buffers the plaintiffs from the effects of a properly operating rail line. This is, of course, precisely what Congress sought to avoid by expressly preempting “remedies provided under federal or state law.” 49 U.S.C. § 10501(b).

Based on the foregoing, Norfolk Southern Railway Company respectfully requests this Board to:

- (1) Institute a declaratory order proceeding;
- (2) Allow Norfolk Southern to conduct any appropriate discovery, including depositions, document production and other discovery pursuant to 49 C.F.R. §§1114.21, *et seq.*; and
- (3) Proceed to determine that the inverse condemnation suits for damages filed in the Circuit Court for Roanoke County are preempted by the Interstate Commerce Commission Termination Act.

REQUEST FOR EXPEDITED CONSIDERATION

Norfolk Southern currently faces eighteen separate lawsuits filed in Roanoke County Circuit Court seeking nuisance damages under an inverse condemnation theory of liability. If these claims are preempted by ICCTA, the cases are dismissed. The Circuit Court for Roanoke County where the cases are pending has suggested that the STB is more suitable to make this determination. Simultaneously with filing this Petition, Norfolk Southern has filed a Motion with the Circuit Court for Roanoke County to stay consideration of the ICCTA preemption issue.

Expedited consideration is requested as a resolution of the ICCTA preemption issue is absolutely necessary in order to fully resolve these suits.

CONCLUSION

For the foregoing reasons, Norfolk Southern Railway Company respectfully requests that the Board grant this Petition, and award Norfolk Southern the relief requested.

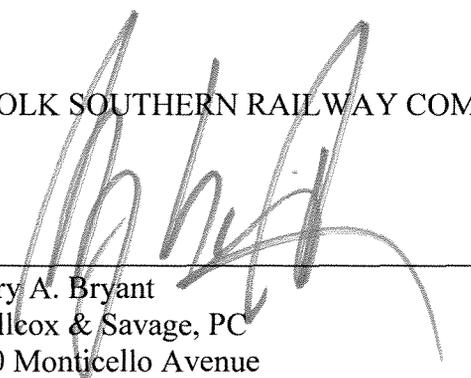
VERIFICATION

I, Gary A. Bryant, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed on November 27, 2012.

NORFOLK SOUTHERN RAILWAY COMPANY

By



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CERTIFICATE OF SERVICE

I hereby certify that I have served the following parties of record in this proceeding and all interested parties with this document by United States Mail:

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Roanoke, Virginia 24018

Richard and Barbara Schilling
3634 Janney Lane
Roanoke, Virginia 24018

Sandra Atkins
3628 Janney Lane
Roanoke, Virginia 24018

Nancy Doyle and Susan Doyle
3706 Janney Lane
Roanoke, Virginia 24018

Roy A. Richardson
3918 Janney Lane
Roanoke Virginia 24018

Katherine A. Durham
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Roanoke, Virginia 24018

Linda R. Lefever
3608 Janney Lane
Roanoke, Virginia 24018

Joshua Wilkinson
3646 Janney Lane
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Michael and Deborah Agee
3934 Lenora Road
Roanoke, Virginia 24018

Joseph and Jennifer Burtch
3619 Janney Lane
Roanoke, Virginia 24018

James A. Hill
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Roanoke, Virginia 24018

Angelo and Robin Juliano
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Roanoke, Virginia 24018

Dianne M. Maxey
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Matthew and Cynthia Owens
3635 Janney Lane
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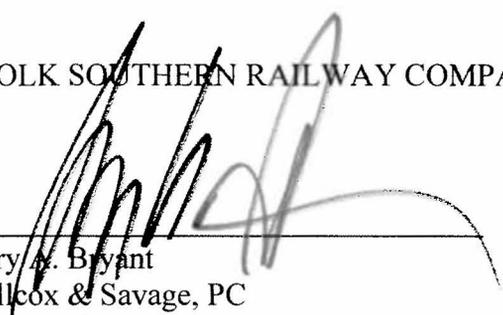
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Dated: November 27, 2012

NORFOLK SOUTHERN RAILWAY COMPANY

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

DAVID W. JONES,

Complainant,

v.

Case No.: CL11-1046

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN CORPORATION,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Corporation
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, David W. Jones (hereinafter referred to as "Owner"), by counsel, and for and in support of his inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for his Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. The Complainant, Owner, owns and resides on the property located on Janney Lane.



2. At all times material herein, Owner has resided at 3624 Janney Lane as his home.

3 The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APPCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner's property. The towers and transmission lines are in view of Owner's property, and Owner's home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer his home from its blighting effects, which include obstructing the view from the property and emitting electromagnetic waves that penetrate the property. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built his home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for

the damage and/or taking that the rail line caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

DAVID W. JONES

By: 
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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

RICHARD SCHILLING

and

BARBARA SCHILLING,

Complainants,

v.

Case No.: CL11-1047

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN CORPORATION,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Corporation
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, Richard Schilling and Barbara Schilling (hereinafter "Owners"), by counsel, and for and in support of their inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the following in support of these complaints:

1. The Complainants, Richard Schilling and Barbara Schilling, own and reside on the property located on Janney Lane.

2 At all times material herein, the Owners have resided at 3634 Janney Lane as their home.

3 The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners' property. The towers and transmission lines are in view of the Owners' property, and the Owners' home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners

cannot buffer their home from its blighting effects, which include obstructing the view from the property and emitting electromagnetic waves that penetrate the property. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

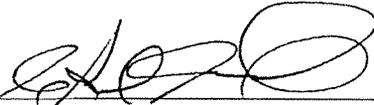
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

RICHARD SCHILLING
BARBARA SCHILLING

By: 

Counsel

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

SANDRA ATKINS,

Complainant,

v.

Case No.: CL11-1048

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN CORPORATION,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Corporation
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, Sandra Atkins (hereinafter "Owner"), by counsel, and for and in support of her inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for her Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. The Complainant, Owner, owns and resides on the property located on Janney Lane.

2. At all times material herein, Owner has resided at 3628 Janney Lane as her home.

3 The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APPCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner's property. The towers and transmission lines are in view of Owner's property, and Owner's home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer her home from its blighting effects, which include obstructing the view from the property and emitting electromagnetic waves that penetrate the property. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built her home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

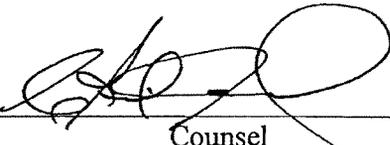
17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for

the damage and/or taking that the rail line caused to her property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

SANDRA ATKINS

By: 
Counsel

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

NANCY DOYLE

and

SUSAN DOYLE,

Complainants,

v.

Case No.: CL11-1049

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN CORPORATION,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Corporation
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, Nancy Doyle and Susan Doyle (hereinafter "Owners"), by counsel, and for and in support of their inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the following in support of these complaints:

1. The Complainants, Nancy Doyle and Susan Doyle, own and reside on the property located on Janney Lane.

2 At all times material herein, the Owners have resided at 3706 Janney Lane as their home.

3 The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APPCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners' property. The towers and transmission lines are in view of the Owners' property, and the Owners' home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners cannot buffer their home from its blighting effects, which include obstructing the view from the property and emitting electromagnetic waves that penetrate the property. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

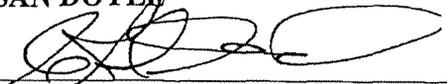
17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

NANCY DOYLE

SUSAN DOYLE

By: 

Counsel

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE
ROY A. RICHARDSON,

Complainant,

v.

Case No.: CL11-1098

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN CORPORATION,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Corporation
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, Roy A. Richardson (hereinafter referred to as "Owner"), by counsel, and for and in support of his inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for his Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. The Complainant, Owner, owns and resides on the property located on Janney Lane.

2. At all times material herein, Owner has resided at 3918 Janney Lane as his home.

3 The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner's property. The towers and transmission lines are in view of Owner's property, and Owner's home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer his home from its blighting effects, which include obstructing the view from the property and emitting electromagnetic waves that penetrate the property. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built his home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

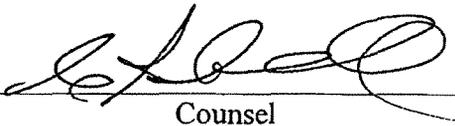
17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for

the damage and/or taking that the rail line caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

ROY A. RICHARDSON

By: 
Counsel

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

KATHERINE A. DURHAM,

Complainant,

v.

Case No.: CL11-1099

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN CORPORATION,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Corporation
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, Katherine A. Durham (hereinafter referred to as "Owner"), by counsel, and for and in support of her inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for her Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. The Complainant, Owner, owns and resides on the property located on Adair Circle, SW.

2. At all times material herein, Owner has resided at 3918 Adair Circle, SW as her home.

3 The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner's property. The towers and transmission lines are in view of Owner's property, and Owner's home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer her home from its blighting effects, which include obstructing the view from the property and emitting electromagnetic waves that penetrate the property. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built her home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to her property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

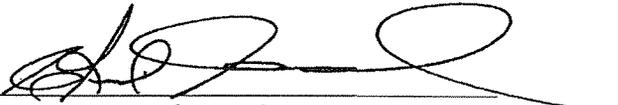
17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for

the damage and/or taking that the rail line caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

KATHERINE A. DURHAM

By: 
Counsel

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VSB #3347
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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

LINDA R. LEFEVER,

Complainant,

v.

Case No.: CL-11-1100

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN CORPORATION,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Corporation
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, Linda R. LeFever (hereinafter referred to as "Owner"), by counsel, and for and in support of her inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for her Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. The Complainant, Owner, owns and resides on the property located on Janney Lane.

2. At all times material herein, Owner has resided at 3608 Janney Lane as her home.

3 The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner's property. The towers and transmission lines are in view of Owner's property, and Owner's home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer her home from its blighting effects, which include obstructing the view from the property and emitting electromagnetic waves that penetrate the property. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built her home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to her property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for

the damage and/or taking that the rail line caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

LINDA R. LEFEVER

By: 
Counsel

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

JOSHUA WILKINSON,

Complainant,

v.

Case No.: CL11-1101

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN CORPORATION,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Corporation
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, Joshua Wilkinson (hereinafter referred to as "Owner"), by counsel, and for and in support of his inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for his Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. The Complainant, Owner, owns and rents the property located on Janney Lane.

2. At all times material herein, Owner has resided at 3646 Janney Lane as his home or has rented 3646 Janney Lane as a home.

3 The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Corporation (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner's property. The towers and transmission lines are in view of Owner's property, and Owner's home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer his home from its blighting effects, which include obstructing the view from the property and emitting electromagnetic waves that penetrate the property. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built his home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

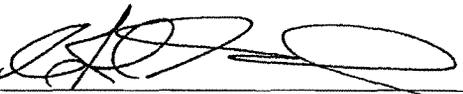
17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for

the damage and/or taking that the rail line caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

JOSHUA WILKINSON

By: 
Counsel

C. Richard Cranwell
VSB #3347
CRANWELL, MOORE & EMICK, P.L.C.
P.O. Box 11804
Roanoke, VA 24022
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Henry E. Howell, III
VSB #22274
Benjamin L. Perdue
VSB #80791
THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.
One East Plume Street
Norfolk, VA 23510
Telephone: (757) 446-9999
Facsimile: (757) 446-9008

Served upon Roger A. Peterson

2-8-12 11:00 A.M.
Date Time
Roger A. Petersen

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

MICHAEL AGEE

To J. H. Burton

and

2-9-12

DEBORAH AGEE,

Complainants,

v.

Case No.: CL12-143

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, Michael and Deborah Agee (hereinafter "Owners"), by counsel, and for and in support of their inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the following in support of these complaints:

1. The Owners own and reside on the property located on Lenora Road.
2. At all times material herein, the Owners have resided at 3934 Lenora Road as their home.
3. The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APPCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.
4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.
5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.
6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.
7. Starting mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners' property. The towers and transmission lines are in view of the Owners' property, and the Owners' home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners cannot buffer their home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a

private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and discharges: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

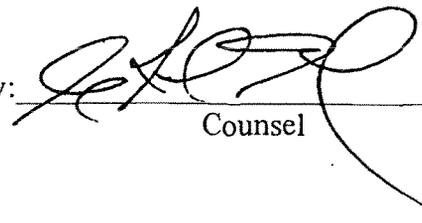
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

MICHAEL AGEE
DEBORAH AGEE

By: 
Counsel

C. Richard Cranwell
VSB #3347
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P.O. Box 11804
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Henry E. Howell, III
VSB #22274
Benjamin L. Perdue
VSB #80791
THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.
One East Plume Street
Norfolk, VA 23510
Telephone: (757) 446-9999
Facsimile: (757) 446-9008

Served upon Roger A. Petersen

2-8-12 11:10 AM
Date Time

Roger A. Petersen

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

JOSEPH BURTCH

To J. H. Burton

and

2-9-12

JENNIFER BURTCH,

Complainants,

v.

Case No.: CL12-144

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, Joseph and Jennifer Burtch (hereinafter "Owners"), by counsel, and for and in support of their inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the following in support of these complaints:

1. The Owners own and reside on the property located on Janney Lane.
2. At all times material herein, the Owners have resided at 3619 Janney Lane as their home.
3. The Respondent, Appalachian Power Company (hereinafter referred to as “APCO”) is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the “SCC”). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.
4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as “Norfolk Southern”) is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.
5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.
6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.
7. Starting mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners’ property. The towers and transmission lines are in view of the Owners’ property, and the Owners’ home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners cannot buffer their home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a

private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and discharges: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

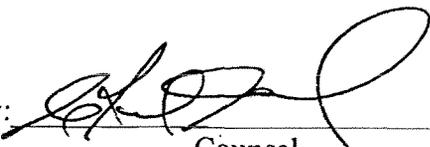
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

JOSEPH BURTCH
JENNIFER BURTCH

By: 
Counsel

C. Richard Cranwell
VSB #3347
CRANWELL, MOORE & EMICK, P.L.C.
P.O. Box 11804
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Henry E. Howell, III
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Benjamin L. Perdue
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THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.
One East Plume Street
Norfolk, VA 23510
Telephone: (757) 446-9999
Facsimile: (757) 446-9008

Served upon Roger A. Petersen

2-8-12 11:00
Date Time

Roger A. Petersen

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

JAMES A. HILL,

To J. H. Burton

Complainant,

2-9-12

v.

Case No.: CL12-145

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
 c/o CT Corporation System, Registered Agent
 4701 Cox Road, Suite 301
 Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
 c/o Roger A. Petersen, Registered Agent
 Three Commercial Place
 Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, James A. Hill (hereinafter referred to as "Owner"), by counsel, and for and in support of his inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for his Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. Owner owns and resides on the property located on Crawford Road.
2. At all times material herein, Owner has resided at 4019 Crawford Road as his home.

3. The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner's property. The towers and transmission lines are in view of Owner's property, and Owner's home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer his home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises

that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built his home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

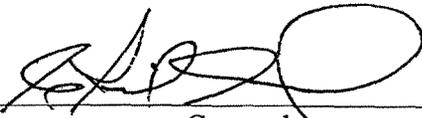
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that the rail line caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

JAMES A. HILL

By: 
Counsel

C. Richard Cranwell
VSB #3347
CRANWELL, MOORE & EMICK, P.L.C.
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Henry E. Howell, III
VSB #22274
Benjamin L. Perdue
VSB #80791
THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.
One East Plume Street
Norfolk, VA 23510
Telephone: (757) 446-9999
Facsimile: (757) 446-9008

Served upon Roger A. Peterson

2812 11:00 A.M.
Date Time *Roger A. Petersen*

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

ANGELO JULIANO

To J. H. Burton

and

2-9-12

ROBIN JULIANO,

Complainants,

v.

Case No.: CL12-146

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, Angelo and Robin Juliano (hereinafter "Owners"), by counsel, and for and in support of their inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the following in support of these complaints:

1. The Owners own and reside on the property located on Janney Lane.
2. At all times material herein, the Owners have resided at 3732 Janney Lane as their home.
3. The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.
4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.
5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.
6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.
7. Starting mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners' property. The towers and transmission lines are in view of the Owners' property, and the Owners' home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners cannot buffer their home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a

private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

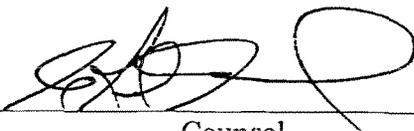
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

ANGELO JULIANO
ROBIN JULIANO

By: 
Counsel

C. Richard Cranwell
VSB #3347
CRANWELL, MOORE & EMICK, P.L.C.
P.O. Box 11804
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Henry E. Howell, III

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Benjamin L. Perdue

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THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.

One East Plume Street

Norfolk, VA 23510

Telephone: (757) 446-9999

Facsimile: (757) 446-9008

Served upon Roger A. Petersen
2-8-12, 10:00 AM
Date Time Roger A. Petersen

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

DIANNE M. MAXEY,

To J. H. Burton

2-9-12

Complainant,

v.

Case No.: CL12-147

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, Dianne M. Maxey (hereinafter referred to as "Owner"), by counsel, and for and in support of her inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for her Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. Owner owns and resides on the property located on Crawford Road.
2. At all times material herein, Owner has resided at 3935 Crawford Road as her home.

3. The Respondent, Appalachian Power Company (hereinafter referred to as “APCO”) is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the “SCC”). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as “Norfolk Southern”) is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner’s property. The towers and transmission lines are in view of Owner’s property, and Owner’s home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer her home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises

that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built her home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to her property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburses: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

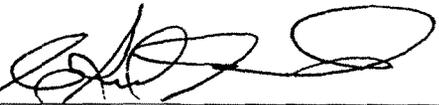
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that the rail line caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

DIANNE M. MAXEY

By: 

Counsel

C. Richard Cranwell
VSB #3347
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Henry E. Howell, III
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Benjamin L. Perdue
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THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.
One East Plume Street
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Served upon Roger A. Petersen

2-8-12 11:00 A Roger A. Petersen
Date Time

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

MATTHEW OWENS

To J. H. Burton

and

2-9-12

CYNTHIA OWENS,

Complainants,

v.

Case No.: CL12-148

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, Matthew and Cynthia Owens (hereinafter "Owners"), by counsel, and for and in support of their inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the following in support of these complaints:

1. The Owners own and reside on the property located on Janney Lane.
2. At all times material herein, the Owners have resided at 3635 Janney Lane as their home.
3. The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.
4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.
5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.
6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.
7. Starting mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners' property. The towers and transmission lines are in view of the Owners' property, and the Owners' home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners cannot buffer their home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a

private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

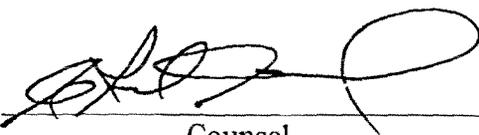
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

MATTHEW OWENS
CYNTHIA OWENS

By: 
Counsel

C. Richard Cranwell
VSB #3347
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Henry E. Howell, III

VSBS #22274

Benjamin L. Perdue

VSBS #80791

THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.

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Telephone: (757) 446-9999

Facsimile: (757) 446-9008

Served upon ROGER A. PETERSEN
2-8-12 11:06 AM
Date Time Roger A. Petersen

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

DALE PFEIFFER

To J. H. Burton

and

2-9-12

DEE PFEIFFER,

Complainants,

v.

Case No.: CL 12-149

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, Dale and Dee Pfeiffer (hereinafter "Owners"), by counsel, and for and in support of their inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the following in support of these complaints:

1. The Owners own and reside on the property located on Adair Circle.
2. At all times material herein, the Owners have resided at 3922 Adair Circle as their home.
3. The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.
4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.
5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.
6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.
7. Starting mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners' property. The towers and transmission lines are in view of the Owners' property, and the Owners' home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners cannot buffer their home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a

private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and discharges: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

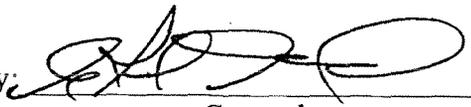
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

DALE PFEIFFER
DEE PFEIFFER

By: 
Counsel

C. Richard Cranwell
VSB #3347
CRANWELL, MOORE & EMICK, P.L.C.
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Henry E. Howell, III
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VSB #80791
THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.
One East Plume Street
Norfolk, VA 23510
Telephone: (757) 446-9999
Facsimile: (757) 446-9008

Served upon Roger A. Petersen

2-8-12 11:00 AM
Date Time

Roger A. Petersen

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

RONALD J. SUSTAKOSKI

To J. H. Burton

and

2-9-12

CHRISTINE A. SUSTAKOSKI,

Complainants,

v.

Case No.: CL12-150

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
 c/o CT Corporation System, Registered Agent
 4701 Cox Road, Suite 301
 Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
 c/o Roger A. Petersen, Registered Agent
 Three Commercial Place
 Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, Ronald J. and Christine A. Sustakoski (hereinafter "Owners"), by counsel, and for and in support of their inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the following in support of these complaints:

1. The Owners own and reside on the property located on Adair Circle.

2. At all times material herein, the Owners have resided at 3917 Adair Circle as their home.

3. The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners' property. The towers and transmission lines are in view of the Owners' property, and the Owners' home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners

cannot buffer their home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

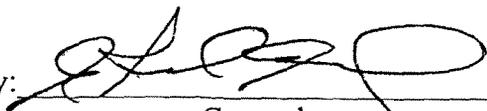
16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

RONALD J. SUSTAKOSKI
CHRISTINE A. SUSTAKOSKI

By: 
Counsel

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Henry E. Howell, III

VSb #22274

Benjamin L. Perdue

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THE EMINENT DOMAIN LITIGATION GROUP, P.L.C.

One East Plume Street

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Telephone: (757) 446-9999

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To J. Burton
2-9-12

Served upon Roger A. Peterson

2-6-12 11:00 AM
Date Time

Roger A. Peterson

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

SAKHONE MANIVONG,

Complainant,

v.

Case No.: CL12-151

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COMES the Complainant, Sakhone Manivong (hereinafter referred to as "Owner"), by counsel, and for and in support of her inverse condemnation Complaint for Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and for her Common Law Breach of Article I Section 11 of the Virginia Constitution, states the following in support of these complaints:

1. Owner owns and resides on the property located on Janney Lane.
2. At all times material herein, Owner has resided at 3641 Janney Lane as her home.

3. The Respondent, Appalachian Power Company (hereinafter referred to as “APCO”) is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the “SCC”). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.

4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as “Norfolk Southern”) is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.

5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.

6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.

7. Starting in mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to Owner’s property. The towers and transmission lines are in view of Owner’s property, and Owner’s home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that Owner cannot buffer her home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises

that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and Owner's home.

9. Owner's property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. Owner built her home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, Owner's property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owner's home, has damaged Owner's property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking Owner's property, APCO failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that APCO's project caused to her property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on Owner's property. The transmission lines and towers constitute a nuisance maintained by a private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of Owner's home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owner's property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated Owner's home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on Owner's property, vibrations that now shake Owner's home, noise that now enters Owner's home substantially interfering with its use as a home, and other deleterious effects on Owner's home.

15. Since APCO cleared the land to build its towers and transmission lines, Owner's property has been and is substantially damaged by the operation of Norfolk Southern's rail line. Owner's property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto Owner's property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged Owner's property and decreased its market value. The property of the Owner is less valuable, marketable and desirable.

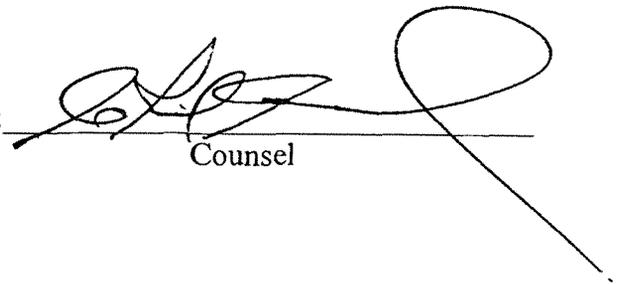
17. The operation of Norfolk Southern's rail line is a public use. The damages to Owner's property are damages caused pursuant to a public use.

18. Before damaging and/or taking Owner's property, Norfolk Southern failed to engage in lawful condemnation procedures to allow Owner to receive just compensation for the damage and/or taking that the rail line caused to his property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owner respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owner within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owner may have such other and further relief as the nature of this case may require.

SAKHONE MANIVONG

By: _____

A handwritten signature in black ink, appearing to read 'S. Manivong', is written over a horizontal line. The signature is stylized and includes a large loop at the end.

Counsel

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Henry E. Howell, III
VSB #22274
Benjamin L. Perdue
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One East Plume Street
Norfolk, VA 23510
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Facsimile: (757) 446-9008

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

DAVID WEISMAN

and

ELIZABETH WEISMAN,

Complainants,

v.

Case No.: CL12-220

APPALACHIAN POWER COMPANY

and

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

SERVE: Appalachian Power Company
c/o CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060-6802

SERVE: Norfolk Southern Railway Company
c/o Roger A. Petersen, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191

**COMPLAINT FOR DECLARATORY JUDGMENT PURSUANT
TO VIRGINIA CODE §§ 8.01-184, 8.01-187 AND 25.1-420**

NOW COME the Complainants, David and Elizabeth Weisman(hereinafter
“Owners”), by counsel, and for and in support of their inverse condemnation Complaint for
Declaratory Judgment Pursuant to Virginia Code §§ 8.01-184, 8.01-187 and 25.1-420, and
for their Common Law Breach of Article I Section 11 of the Virginia Constitution, state the
following in support of these complaints:

1. The Owners own and reside on the property located on Park Lane.
2. At all times material herein, the Owners have resided at 3953 Park Lane as their home.
3. The Respondent, Appalachian Power Company (hereinafter referred to as "APCO") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to APCO the power of eminent domain under the supervision of the State Corporation Commissioner (hereinafter referred to as the "SCC"). APCO is a public utility subject to the regulation of the Virginia State Corporation Commission under Title 56 of the Code of Virginia.
4. The Respondent, Norfolk Southern Railway Company (hereinafter referred to as "Norfolk Southern") is a public service corporation organized under the laws of the Commonwealth of Virginia. The legislature has delegated to Norfolk Southern the power of eminent domain.
5. On March 27, 2009, the SCC issued an Order granting APCO a Certificate of Public Convenience and Necessity Number the same authorizing APCO to construct and operate a new electric substation and 1.4 miles of 138 kilovolt (kV) electric transmission lines in Roanoke County, Virginia.
6. Pursuant to this Order, the SCC has determined that the transmission lines are for the public use.
7. Starting mid-2009, APCO constructed and placed the towers and transmission lines on land abutting and in proximity to the Owners' property. The towers and transmission lines are in view of the Owners' property, and the Owners' home is almost within the fall zone of the towers and transmission lines.

8. The electrical transmission towers are at such a height that the Owners cannot buffer their home from its blighting effects, which include obstructing the view from the property, emitting electromagnetic waves that penetrate the property, and making noises that disturb the Owners' home. As part of its project, APCO removed dense old growth hardwood stands of trees between the railroad operation of Norfolk Southern and the Owners' home.

9. The Owners' property as a whole suffered and suffers a diminution in value as a result of the electrical transmission project. The Owners built their home on the property under the before market conditions; now, after the project's construction, the property is not as suitable for this highest and best use. After construction of the towers and transmission lines, the market now has strong negative resistance to using this property as a residence. As a result of this project, the Owners' property is less valuable, marketable and desirable.

10. APCO's towers and transmission lines, built in close proximity of Owners' home, has damaged the Owners' property, and APCO has breached and violated Article I, Section 11 of the Constitution of Virginia.

11. Before damaging and/or taking the Owners' property, APCO failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that APCO's project caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

12. The electrical transmission towers and lines have a blighting influence on the Owners' property. The transmission lines and towers constitute a nuisance maintained by a

private corporation with the power of eminent domain, which is damage within the meaning of Article I, Section 11 of the Constitution of Virginia.

13. Norfolk Southern operates a rail line on land adjoining the land on which APCO's transmission line and towers are located and in close proximity of the Owners' home.

14. The land APCO's transmission lines and towers are on is located between Norfolk Southern's rail line and Owners' property. APCO cleared the land its transmission lines and towers are located on as part of the building and/or construction process. Part of the clearing process included cutting down and uprooting trees that insulated the Owners' home from the damaging effects of Norfolk Southern's public use of property for its rail operations, which includes transporting large quantities of coal. With the trees gone, the rail line operation generates and disburse: coal dust that now trespasses on the Owners' property, vibrations that now shake the Owners' home, noise that now enters the Owners' home substantially interfering with its use as a home, and other deleterious effects on the Owners' home.

15. Since APCO cleared the land to build its towers and transmission lines, the Owners' property has been and is substantially damaged by the operation of Norfolk Southern's rail line. The Owners' property has experienced noise and vibration as well as the discharge of smoke, dust, dirt, and other particulates from the rail line onto the Owners' property.

16. The operation of Norfolk Southern's rail line now constitutes a nuisance. The noise, vibration, and discharges have damaged the Owners' property and decreased its market value. The property of the Owners is less valuable, marketable and desirable.

17. The operation of Norfolk Southern's rail line is a public use. The damages to the Owners' property are damages caused pursuant to a public use.

18. Before damaging and/or taking the Owners' property, Norfolk Southern failed to engage in lawful condemnation procedures to allow the Owners to receive just compensation for the damage and/or taking that the rail line caused to their property within the meaning of Article I, Section 11 of the Constitution of Virginia.

WHEREFORE, the Owners respectfully prays this Court enter an Order declaring that APCO and Norfolk Southern have taken and/or damaged the property of the Owners within the meaning of Article I, Section 11 of the Constitution of Virginia without paying just compensation; that pursuant to Virginia Code § 8.01-187, as amended, a condemnation commission of commissioners be empaneled for the purposes of determining and awarding just compensation; that attorney's fees, costs and expert fees, and other disbursement and expenses be awarded pursuant to Virginia Code § 25.1-420, as amended; and that the Owners may have such other and further relief as the nature of this case may require.

DAVID WEISMAN
ELIZABETH WEISMAN

By: 
Counsel

C. Richard Cranwell
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Telephone: (757) 446-9999
Facsimile: (757) 446-9008

At Roanoke County Court November Term, 1890.

Roanoke & Southern Railway Company Plaintiff }
against } Motion to
Land Owners Defendants, assess Damages.

This day James M. Watts, John Coon, James W. Turner and Isaac H. Huff, disinterested free-holders of the County of Roanoke, who were appointed at the July Term, 1890, of this Court, Commissioners to ascertain a just compensation to the owners of land upon the line of said improvement within Roanoke County, for such of said lands as are proposed to be taken for said Company for its purposes, filed their several reports in the cases of the following named land-owners, in which said reports they have allowed to the respective land-owners the sums of money set opposite their respective names, to wit:-

<u>William Snyder and Eliza Snyder</u>	Ten Dollars	\$10.00
<u>Robert Coon</u>	Seventy Seven 50/100 Dollars	77.50
<u>Wm. Wertz</u>	Three Hundred & Twenty Dollars	320.00
<u>James Amos</u> tenant of the freehold of the land belonging to James Amos' Heirs, Two Hundred & Twenty Five 52/100		225.50
<u>Wm. J. Wertz and George Wertz</u> tenants of the freehold in possession of land belonging to Peter Wertz' Heirs, Three Hundred & Thirty Seven 50/100 Dollars		337.50
<u>Elizabeth Wertz and Wm. J. Wertz</u> tenants of the freehold in possession of land belonging to the Heirs of Jacob Wertz, deceased, One Hundred & Fifty Seven Dollars		157.00
<u>Anna Murray</u> One hundred and sixty two dollars		162.00
<u>Wm. D. Boon</u> tenant in possession of the freehold belonging to the heirs of E. D. Boon, deceased, Thirty Dollars		30.00
<u>Daniel Phelps</u> Fifteen Dollars		15.00
<u>J. E. Harrison</u> Twenty Five Dollars		25.00
<u>Nancy McGuire</u> Fifteen Dollars		15.00

And it appearing to the Court that the said several reports are in accordance with the statute, and that the several

EXHIBIT

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parties above named had due notice of the time at which said Commissioners met on the lands aforesaid was given to the tenants of the freehold in accordance with the statute, and there being no exceptions to said reports, and no good cause being shown against the same, the same were severally confirmed and the said Railway Company paid into Court the respective sums of money so ascertained and reported to be just compensation for the lands of the said several parties, and the title to the said lands are hereby absolutely vested in the said Company in accordance with the reports and plans filed in the said several cases.

Reports referred to in foregoing Order.

Report as to land of Wm. Snyder & wife.

Virginia, Roanoke County, to wit:

I, S. H. C. Greenwood, a Notary Public for the said County, do certify that James B. Day, Isaac H. Huff, James M. Watts, James W. Turner & John Coon have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof Wm. Snyder & his wife is tenant as is proposed to be taken by the ROANOKE & SOUTHERN RAILWAY COMPANY for its purposes, and will truly certify the same.

Given under my hand this 4 day of November, 1890.

S. H. C. Greenwood, Notary Public.

We, James M. Watts, John Coon, James W. Turner, Isaac H. Huff, appointed by the County Court of Roanoke County by its order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof Wm. Snyder & Eliza, his wife, are tenants as is proposed to be taken by the ROANOKE & SOUTHERN RAILWAY COMPANY for its purposes, do certify that on the 4th day of November, 1890, the day designed in said notice, we met together on said part of the land, the limit of which part were then and there described to us as follows, to wit: a strip of land one hundred feet wide as designated on the line of the right of way of said railroad, containing 0.42 of an acre, a map of which strip is herewith filed.

And after being first duly sworn, upon a view of the part

aforsaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed (\$10.00) Ten Dollars will be a just compensation.

Given under our hands this 4th day of November, 1890.

James M. Watts.

John Coon.

James W. Turner.

I. H. Huff.

Report as to land of Robert Coon.

Virginia, Roanoke to-wit:

I, E. H. C. Greenwood, Notary Public for the said County, do certify that James E. Day, Isaac H. Huff, James M. Watts, James W. Turner and John Coon have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof Robt. Coon is tenant, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 4 day of November, 1890.

E. H. C. Greenwood, Notary Public.

We, James M. Watts, John Coon, James W. Turner, I. H. Huff, appointed by the County Court of Roanoke County by order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof Robt. Coon and Coon, his wife, are tenants, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, 1890, the day designed in said notice, we met together on said land, and not having completed our duties we regularly adjourned to meet on the 5th day of November, at which time we again met on said part of the land the limit of which part were then and there described to us as follows, to-wit: A strip of land one hundred feet wide, as

designated by the line of the right of way of said railroad, containing 1.55 acres, a map of which ^{at all} is herewith filed.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$77.50), Seventy Seven 50/100 dollars will be a just compensation.

Given under our hands this 5th day of November, 1890.

James M. Watts.

John Coen.

James W. Turner.

I. H. Huff.

Report as to land of Neah J. Wertz.

Virginia, Roanoke County, to-wit:

I, E. H. C. Greenwood, a Notary Public for the said County, do certify that James E. Day, Isaac H. Huff, James M. Watts, James W. Turner & John Coen have this day ~~made oath~~ before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof N. J. Wertz is tenant, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 4 day of November, 1890.

E. H. C. Greenwood, Notary Public.

We, James M. Watts, John Coen, James W. Turner, I. H. Huff, appointed by the County Court of Roanoke County, by its order of the day of _____ 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof Neah J. Wertz is tenant, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, 1890, the day designated in said notice, we met together on said land, and not having completed our duties, we regularly adjourned to meet on the 5th day of Novem-

ber, at which time we again met on said part of the land, the limit of which part were then and there described to us as follows, to-wit:

A strip of land one hundred feet wide, as designated by the line of the right of way of said railroad, containing 3.2 acres, a map of which strip is herewith filed.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$320.00) Three hundred & Twenty, will be a just compensation.

Given under our hands this 5th day of November, 1890.

James M. Watts.

John Coon.

James W. Turner.

I. H. Huff.

Report as to land of Peter Wertz' heirs.

Virginia, Roanoke City, to-wit:

I, F. H. C. Greenwood, a Notary Public for the said County, do certify that James E. Day, Isaac H. Huff, James M. Watts, James W. Turner & John Coon have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof the heirs of Peter Wertz are tenants, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 4th day of November, 1890.

F. H. C. Greenwood, Notary Public.

We, James M. Watts, John Coon, James W. Turner, Isaac H. Huff, appointed by the County Court of Roanoke County, by its order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof George Wertz and Noah J. Wertz is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, 1890, the day

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designed in said notice, we met together on said land and not having completed our duties, we regularly adjourned to meet on the 6th day of November, at which time we again met on said part of the land, the limit of which part were then and there described to us as follows, to-wit:

A strip of land one hundred feet wide, as designated by the line of the right of way of said railroad, containing 6.74 acres, a map of which strip is herewith filed.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$337.50) Three hundred and thirty seven 50/100 [^] will be a just compensation.

Given under our hands this 6th day of November, 1890.

James M. Watts.

John Coon.

James W. Turner.

I. H. Huff.

Report as to land of Jacob Wertz' heirs.

Virginia, Roanoke County, to-wit:

I, E. H. C. Greenwood, a Notary Public for the said County, do certify that James E. Day, Isaac H. Huff, James M. Watts, James W. Turner and John Coon have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof the heirs of Jacob Wertz are tenants, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 4th day of November, 1890.

E. H. C. Greenwood, Notary Public.

We, James M. Watts, John Coon, James W. Turner, Isaac H. Huff, appointed by the County Court of Roanoke County by its order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof

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Elizabeth Wertz & Noah J. Wertz are tenants, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, 1890, the day designated in said notice, we met together on said land and not having completed our duties we regularly adjourned to meet on the 8th day of November, at which time we again met on said part of the land, the limit of which ^{part} were then and there described to us as follows, to-wit:

A strip of land one hundred feet wide, as designated by the line of the right of way of said Railroad, containing 3.14 acres a map of which strip is herewith filed.

And after first being duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residus of the lot or tract beyond the peculiar benefits to be derived in respect to such residus from the work to be constructed, (\$157.00) One hundred fifty seven dollars will be a just compensation.

Given under ~~our~~ hands this 8th day of November, 1890.

James M. Watts.

John Coon.

James W. Turner.

I. H. Huff.

Report as to land of Abram Murray.

Virginia, Roanoke County, to-wit:

I, S. H. C. Greenwood, a Notary Public for the said County, do certify that James E. Day, Isaac H. Huff, James M. Watts, James W. Turner & John Coon have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof the heirs of Abram Murray are tenants, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 4th day of November, 1890..

S. H. C. Greenwood, Notary Public.

We, James M. Watts, John Coon, James W. Turner and Isaac H. Huff,

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appointed by the County Court of Roanoke County, by its order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof the heirs of Abram Murray are tenants, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, 1890, the day designed in said notice, we met together on said part of the land, the limit of which part were then and there described to us as follows, to-wit:

A strip one hundred feet wide containing 4.07 acres, as shown by the line of the right of way of said railway, commencing at the lands of W. S. Boone and extending to the lands of Jas. A. Amos, dec'd, as per plat, herewith filed.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$162.00) One hundred and sixty two 80/100 dollars will be a just compensation.

Given under our hands this 4 day of November, 1890.

James M. Watts.

John Coon.

James W. Turner.

I. H. Huff.

Report as to land of B. D. Boon's Heirs.

Virginia, Roanoke County, to-wit:

I, S. H. C. Greenwood, a Notary Public for the said County, do certify that James M. Watts, John Coon, James W. Turner, I. H. Huff, have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof B. D. Boon's heirs and Mrs. A. D. Boon is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purpose; and will truly certify the same.

Given under my hand this 4th day of November, 1890.

S. H. C. Greenwood, Notary Public.

We, James M. Watts, John Coon, James W. Turner, I. H. Huff, appointed by the County Court of Roanoke County by its order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof Mrs. A. D. Boone is tenant, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, 1890, the day designed in said notice, we met together on said part of the land, the limit of which part were then and there described to us as follows, to-wit:

A strip of land one hundred feet wide as designated by the line of the right of way of said railway, containing 1.86 acres, a map of which strip is herewith filed.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$30.00). Thirty dollars will be a just compensation.

Given under our hands this 4th day of November, 1890.

- James M. Watts.
- John Coon.
- James W. Turner.
- I. H. Huff.

Report as to land of Daniel Phelps.

Virginia, Roanoke County, to-wit:

I, E. H. C. Greenwood, Notary Public for the said city, do certify ^{that} James R. Day, Isaac H. Huff, James M. Watts, James W. Turner & John Coon have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof Daniel Phelps is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 4th day of 1890.

E. H. C. Greenwood, Notary Public.

We, James M. Watts, John Coon, James W. Turner, I. H. Huff, appointed by the County Court of Roanoke County by its order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof Daniel Phelps is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, 1890, the day designed in said notice, we met together on said part of the land, the limit of which part were then and there described to us as follows, to-wit:

A strip of land one hundred feet wide, as designated by the line of the right of way of the said Railway, containing 1.04 acres, a map of which strip is herewith filed.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$15.00) Fifteen dollars will be a just compensation.

Given under our hands this 4th day of November, 1890.

James M. Watts.

John Coon.

James W. Turner.

I. H. Huff.

Report as to land of J. W. Hartman.

Virginia, Roanoke County, to-wit:

I, S. H. C. Greenwood, a Notary Public for the said County, do certify that James E. Day, Isaac H. Huff, James M. Watts, James W. Turner and John Coon have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation, for such of the land of the freehold whereof J. W. Hartman is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 4 day of November, 1890.

S. H. C. Greenwood, Notary Public.

//

We, James M. Watts, John Coon, James W. Turner, Isaac H. Huff, appointed by the County Court of Roanoke County, by its order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof J. W. Hartman is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, the day designed in said order, we met together on said part of the land, the limit of which part were then and there described to us as follows, to-wit:

A strip of land one hundred feet wide, as designated by the line of the right of way of said railway, containing 2.68 acres. This right of way is 79 feet from the centre of the right of way to the dwelling house, but we find that from the conformation of the country it would be impracticable without unreasonable expense to otherwise locate said railroad. A map of said strip is herewith filed.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$25.00) Twenty five dollars will be a just compensation.

Given under our hands this 4th day of November, 1890.

James M. Watts.

John Coon.

James W. Turner.

I. H. Huff.

Report as to land of Nancy McGuire.

Virginia, ~~Roanoke~~ County, to-wit:

I, S. H. C. Greenwood, Notary Public for the said City, do certify that James E. Day, Isaac H. Huff, James M. Watts, James W. Turner & John Coon have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof Nancy McGuire is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 4th day of November, 1890.

S. H. C. Greenwood, Notary Public.

12

We, James M. Watts, John Coon, James W. Turner, Isaac H. Huff, appointed by the County Court of Roanoke County by its order of the day of 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof Nancy McGuire is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4th day of November, the day designed in said order, we met together on said part of the land, the limit of which part were then and there described to us as follows, to-wit:

A strip of land one hundred feet wide, as designated by the line of the right of way of said railroad, containing 2.45 acres a map of which strip is herewith filed.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$15.00) Fifteen dollars will be a just compensation.

Given under our hands this 4th day of November, 1890.

James M. Watts.

John Coon.

James W. Turner.

I. H. Huff.

13

Report as to Estate of James Amos, deceased.

Virginia, Roanoke City, to-wit:

I, E. H. C. Greenwood, Notary Public for the said County, do certify that James E. Day, Isaac H. Huff, James N. Watts, James W. Turner & John Coon, have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof Delila Amos is tenant, as is proposed to be taken by the Roanoke & Southern Railway Company, for its purposes, and will truly certify the same.

Given under my hand, this 4th day of November, 1890.

E. H. C. Greenwood, Notary Public

We, James M. Watts, John Coon, I. H. Huff, James W. Turner, appointed by the County Court of Roanoke County by its order of the day of _____ 1890, to ascertain what will be a just compensation for such part of the land of the freehold whereof Delilah Amos is tenant, as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 4 day of November, 1890, the day designed in said notice, we met together on said part of the land, the limit of which part were then and there described to us as follows, to-wit: a strip of land one hundred feet wide as designated by the line of the right of way of said Railroad, containing 7.52 acres, as shown by a map of said strip herewith filed. We further find that said strip includes the dwelling of the tenant, but from the conformation of the country, the road could not be located elsewhere, except at unreasonable expense.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$218.00 +) 7.52 Two Hundred and Eighteen Dollars & Seven 51/100, making \$225.52 in all, will be a just compensation.

Given under our hands, this 4 day of November, 1890.

James M. Watts.
John Coon.
I. H. Huff.
James W. Turner.

At Roanoke County Court, March 13th, 1891.

Roanoke and Southern Railway Co. Plaintiff	}	Motion to assess Damages.
against		
Mary Lockett, W. F. Lockett, Charles Sink, Levi Witt and W. H. Trout. Defendants		

This day David E. Kefauver, George M. Bell and William H. Cook, disinterested free-holders of the County of Roanoke, who were appointed at the February Term 1891, of this Court, to ascertain a just compensation to the several owners of land above mentioned, upon the line of said road within said County for such of said lands as are proposed to be taken by said company for its purposes, filed their several reports by which they have allowed to the respective land-owners the sums of money set opposite their names, as follows:

Mary Lockett	\$272.00
W. F. Lockett	605.00
Charles Sink	40.00
Levi Witt	88.00
William H. Trout	300.00

And the said Company and the several land-owners appearing in Court by Counsel and making no exception to said several reports, but agreeing to accept the same, the said several reports are hereby confirmed, and the said Company having paid in Court the several sums of money aforesaid, it is ordered that the Clerk of this Court shall pay to the said several land-owners as follows, to-wit: to Mrs. Mary Lockett \$272.00, to W. F. Lockett \$605.00, to Charles Sink \$40.00, to Levi Witt \$88.00 and to W. H. Trout \$300.00, or to their attorneys.

And the title to the said lands as shown by the report of commissioners and plats accompanying the same are hereby vested absolutely in the Roanoke and Southern Railway Company.

And the said Company shall pay the costs of this proceeding.

Before the above sums of money shall be paid to W. H. Trout and Mrs. Mary Lockett, Jacob E. Baer, who is hereby appointed a Commissioner for that purpose, shall ascertain and report to whom said money so awarded to Mary Lockett and W. H. Trout is payable, some doubt being entertained by the said Company as to the title of said parties to said land.

Report as to land of Mrs. Mary F. Lockett.
157
Virginia, Roanoke County, to-wit:

I, John Coon, a Justice for the said county, do certify that D. E. Kefauver, Geo. M. Bell and Wm. H. Cook have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof Mrs. Mary Lockett is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 20 day of February, 1891.

John Coon, Justice of the Peace.

We, D. E. Kefauver, Geo. M. Bell and Wm. H. Cook, appointed by the County Court of Roanoke County by its order of the day of February, 1891, to ascertain what will be a just compensation for such part of the land of the freehold whereof Mrs. Mary F. Lockett is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 20th day of February, 1891, the day designed in said order, we met together on said land and not having completed our duties we regularly adjourned to meet on the 21st day of February, at which time we again met on said part of the land, the limit of which part were then and there described to us as follows, to-wit: Being a strip or portion of land 100 feet wide, fifty feet on either side of the center line of said railway, commencing at the line of the lands of Wm. Trout and extending thence through the land of Mary Lockett, maintaining the above mentioned width, a distance of 1226 feet, more or less, to the line of the lands of W. F. Lockett containing 2.81 acres. A plat of the above land taken being hereto attached, and is made part of this report. ^{and} after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$272.00) Two Hundred and Seventy Two Dollars will be a just compensation.

Given under our hands this 21 day of February, 1891.

D. E. Kefauver.

Geo. M. Bell.

Wm. H. Cook.

16
Report as to land of W.F.Lockett.

Virginia, Roanoke County, to-wit:

I, John Coon, a Justice for the said County, do certify that D. E. Kefauver, Geo. M. Bell and Wm. H. Cook have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof Wm. F. Lockett is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 20th day of February, 1891.

John Coon, Justice of the Peace.

We, D. E. Kefauver, Geo. M. Bell and Wm. H. Cook, appointed by the County Court of Roanoke County by its order of the day of February, 1891, to ascertain what will be a just compensation for such part of the land of the freehold whereof Wm. F. Lockett is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 20th day of February, 1891, the day designed in said order, we met together on said land and not having completed our duties we regularly adjourned to meet on the 21 day of February, 1891, at which time we again met on said part of the land, the limit of which part were then and there described to us as follows, to-wit: Being a strip or portion of land 100 feet wide, 60 feet on either side of the centre line of said Railway, commencing at the line of the lands of Mary Lockett and extending thence through the land of said W. F. Lockett, maintaining the above mentioned width a distance of 1572 feet, more or less, to the line of the lands of Levi Witt, containing 3.61 acres, more or less, a plat of said land herein taken being hereto attached and is made part of this report. And after being first duly sworn, upon a view of the part aforesaid, and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$605.00) six hundred & five dollars will be a just compensation.

Given under our hands this 21 day of February, 1891.

D. E. Kefauver.

Geo. M. Bell.

Wm. H. Cook.

Report as to ¹⁷land of Charles Sink.

Virginia, Roanoke County, to-wit:

I, John Coon, a Justice for the said county, do certify that D. E. Kefauver, Geo. M. Bell and Wm. H. Cook have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold thereof Charles Sink is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this day of 1890.

John Coon, Justice of the Peace.

We, D. E. Kefauver, Geo. M. Bell and Wm. H. Cook, appointed by the County Court of Roanoke County by its order of the day of February, 1891, to ascertain what will be a just compensation for such part of the land of the freehold whereof Charles Sink is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 20th day of February, 1891, the day designed in said order, we met together on said land and not having completed our duties we regularly adjourned to meet on the 21st day of February, at which time we again met on said part of the land, the limit of which part were then and there described to us as follows, to-wit: Being a strip or portion of land 100 feet wide, 50 feet on either side of the centre line of said Railway, commencing at the line of the lands of W. H. Trout and extending thence through the said lands of Chas. Sink, maintaining the above mentioned width a distance of 667 feet, more or less, to the line of the lands of J. A. Peters, containing 1.63 acres, more or less. A plat of the land herein taken and showing its peculiar shape, is hereto attached and is made part of this report.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$40.00) Forty dollars will be a just compensation. Given under our hands this 21st day of February, 1891.

D. E. Kefauver.

Geo. M. Bell.

Wm. H. Cook.

18
Report as to land of Levi Witt.

Virginia, Roanoke County, to-wit:

I, John Coon, a Justice for the said county, do certify that D. E. Kefauver, Geo. M. Bell and Wm. H. Cook have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof Levi Witt is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 20 day of February, 1891:

John Coon, Justice of the Peace.

We, D. E. Kefauver, Geo. M. Bell and Wm. H. Cook, appointed by the County Court of Roanoke County by its order of the day of February, 1891, to ascertain what will be a just compensation for such part of the land of the freehold whereof Levi Witt is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 20 day of February, 1891, the day designed in said order, we met together on said land and not having completed our duties we regularly adjourned to meet on the 21 day of February, 1891, at which time we again met on said part of the land, the limit of which part were then and there described to us as follows, to-wit: Being a strip or portion of land 100 feet wide, 50 feet on either side of the centre line of said railway, commencing at the line of the lands of W. F. Lockett and extending thence through the lands of the said Witt, maintaining the above mentioned width a distance of 263 feet, more or less, to the line of the lands of Noah J. Wertz, containing $\frac{8}{10}$ acres, more or less, a plat of the land taken being hereto attached and is made part of this report.

And after being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$88.00) Eighty Eight Dollars will be a just compensation.

Given under our hands this 21 day of February, 1891.

D. E. Kefauver.

Geo. M. Bell.

Wm. H. Cook.

17
Report as to land of W.H. Trout.

Virginia, Roanoke County, to-wit:

I, John Coon, a Justice for the said county, do certify that D. E. Kefauver, Geo. M. Bell, W. H. Cook have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such of the land of the freehold whereof W. H. Trout is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, and will truly certify the same.

Given under my hand this 20 day of February, 1891.

John Coon, Justice of the Peace.

We, D. E. Kefauver, Geo. M. Bell and Wm. H. Cook, appointed by the County Court of Roanoke County by its order of the day of February, 1891, to ascertain what will be a just compensation for such part of the land of the freehold whereof W. H. Trout is tenant as is proposed to be taken by the Roanoke & Southern Railway Company for its purposes, do certify that on the 20th day of February, 1891, the day designed in said order, we met together on said land and not having completed our duties, we regularly adjourned to meet on the 21 day of February, at which time we again met on said part of the land, the limit of which part were then and there described to us as follow to-wit:

Being a strip or portion of land 100 feet wide, 50 feet on either side of the centre line of said railway, commencing at the line of T. T. Fishburne and extending thence through the lands of said Trout, maintaining the above mentioned width a distance of 522 feet, more or less, to the line of the lands of Chas. Sink, containing 1.53 acres, more or less. All buildings on the land herein taken by said Railway Company for its Right of Way are to be removed at the expense of said Trout. A plat of said land taken being hereto attached and is made part of this report. And after first being first duly sworn, upon a view of the part aforesaid and upon such evidence as was before us, we are of the opinion, and do ascertain that for the said part, and for the damage to the residue of the lot or tract beyond the peculiar benefits to be derived in respect to such residue from the work to be constructed, (\$300.00) Three hundred dollars will be a just compensation. Given under our hands this 21st day of February, 1891.

D. E. Kefauver.

Geo. M. Bell.

Wm. H. Cook.

State of Virginia,
Roanoke County, to-wit:

I, William McCauley, Clerk of the County Court of Roanoke County in the State of Virginia, do certify that the foregoing are true copies of the orders of confirmation of reports of assessment of damages, to land-holders of lands taken by the Roanoke and Southern Railway Company for its purposes, and of said Reports.

Given under my hand, this 12th day of November, 1891.

*Wm. McCauley Clerk of Roanoke
County Court. -*



map data: 10/24/2011

© 2012 Google
© 2012 Commonwealth of Virginia
38° 33' 17" N 78° 59' 17" W

Imagery Date: 9/31/2011

Ogden Rd

Winding Way Rd SW

3953-Weisman

Park Ln SW

220

Image © 2012, Commonwealth of Virginia
© 2012 Google

36° 19' 45.36" N 79° 58' 33.63" W 357' 311'

Hie St SW

Perilame

Southway Dr

tabbies'
EXHIBIT
4

ORIGINAL

V I R G I N I A

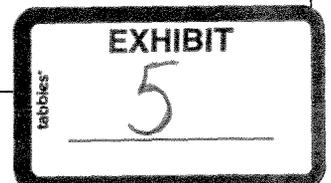
IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

RICHARD SCHILLING,	:
	:
and	:
	:
BARBARA SCHILLING,	:
	:
Complainants,	:
	:
-vs-	:Case No.:CL11-001047-00
	:
APPALACHIAN POWER COMPANY,	:
	:
and	:
	:
NORFOLK SOUTHERN RAILWAY	:
COMPANY,	:
	:
Respondents.	:
	:October 29, 2012
-----	: 1:30 P.M.

HEARD BEFORE:

THE HONORABLE RICHARD P. DOUGHERTY, JR.

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
ROANOKE, VIRGINIA 24027
(540) 380-5017



APPEARANCES:

CRANWELL, MOORE & EMICK, PLC
ROANOKE, VIRGINIA
BY: C. RICHARD CRANWELL, ESQ.

Counsel on behalf of Complainants

THE EMINENT DOMAIN LITIGATION GROUP, PLC
NORFOLK, VIRGINIA
BY: HENRY E. HOWELL, III, ESQ.

Counsel on behalf of Complainants

FRITH, ANDERSON & PEAKE, PC
ROANOKE, VIRGINIA
BY: PHILLIP V. ANDERSON, ESQ.

Counsel on behalf of Respondent, Appalachian
Power Company

WILLCOX & SAVAGE, PC
NORFOLK, VIRGINIA
BY: GARY A. BRYANT, ESQ.

Counsel on behalf of Respondent, Norfolk Southern
Railway Company

NORFOLK SOUTHERN RAILWAY COMPANY
NORFOLK, VIRGINIA
BY: THOMAS W. AMBLER, ESQ.

* * * * *

1 THE COURT: Theirs is set Tuesday. I saw that
2 notice at the very back all the way out ---

3 MR. HOWELL: Thank you.

4 THE COURT: So we are here on just one today. If
5 I may I have everybody so that we can follow the
6 Record, identify yourself for the Record and tell us
7 who you represent.

8 MR. HOWELL: Yes, I am Henry Howell, III, I am
9 here for the Schillings along with Dick Cranwell.

10 MR. CRANWELL: Richard Cranwell and I am here for
11 the Schillings, Your Honor.

12 THE COURT: Represent both the Schillings?

13 MR. CRANWELL: Yes, sir.

14 MR. BRYANT: Gary Bryant with Willcox and Savage
15 representing Norfolk Southern and I have with me in
16 house counsel Tom Ambler of Norfolk Southern.

17 MR. ANDERSON: Good afternoon, Your Honor, Phil
18 Anderson of Frith, Anderson & Peake for APCO.

19 THE COURT: And you are just watching?

20 MR. ANDERSON: Just watching, Your Honor.

21 THE COURT: How do you want to proceed, do you
22 want to start off?

23 MR. BRYANT: Well it is my demurrer, Judge, so I
24 guess it is I have the burden?

1 THE COURT: I have to find it, okay, I've got
2 that. Because I have hearing aids, and get a speaker
3 up here ---

4 MR. BRYANT: I appreciate that.

5 THE COURT: I will keep up with what everybody
6 says.

7 MR. BRYANT: Yes, Your Honor and we are focusing
8 on the demurrer's today especially to the extent that
9 the special pleas require any facts, which aren't
10 specifically pled or before the Court. So we are
11 going to be focusing on those defenses that we believe
12 Your Honor can consider and rule upon based on the
13 pleading as it stands right now.

14 THE COURT: I want to interject, I brought this
15 out to show everybody. I am scheduled to retire March
16 1st. Those are the opinions I have got to write right
17 now. Starting today I am going to start carrying that
18 stuff home at night. I just wanted to let you know in
19 advance if you get a chance to look at that.

20 MR. CRANWELL: Judge, if it will help you I will
21 write your opinion in this case.

22 THE COURT: I appreciate that.

23 MR. BRYANT: I will better than that I'll let you
24 sign my brief.

1 THE COURT: That will certainly speed this stuff
2 up.

3 I have to write those opinions because I don't
4 know the answer. I have to look them up, you all can
5 take a look at that. If you can picture a bottom line
6 that is where your case is.

7 MR. BRYANT: I hear you, Judge and maybe it won't
8 be difficult, but we are here and we would like to
9 argue it if we can.

10 THE COURT: Please.

11 MR. BRYANT: Just as introduction, I know you are
12 familiar with this, but this is one of 19 identical
13 complaints filed by individuals seeking inverse
14 condemnation damages because they have suffered
15 diminution in value of their property resulting from
16 the erection of power lines by APCO which occurred in
17 2009.

18 THE COURT: Can I interrupt you?

19 MR. BRYANT: Sure.

20 THE COURT: Any chance the Supreme Court has
21 already ruled on these 19, that would make this case a
22 whole lot easier?

23 MR. BRYANT: No. Well if it is APCO's power
24 lines they are complaining about, why are we here?

1 Well this is why. The complaint alleges that in order
2 to erect the power lines what APCO had to do was to
3 remove trees that were on APCO's property and APCO's
4 property is beside our property. None of the
5 Plaintiff's and certainly not the Schillings are
6 adjacent to any property owned by the railroad, they
7 are all on the other side of APCO's property.

8 So the theory goes that by removing trees on
9 APCO's own property, APCO's trees, the Plaintiffs are
10 now exposed to the effects of a rail line and I know
11 this isn't in the pleas, but I don't think anybody
12 would argue with it, a rail line that has been
13 operating there for over 100 years.

14 THE COURT: Somebody said 1891?

15 MR. BRYANT: That is when we built it in the
16 1800s. That is not before the Court and we have some
17 defenses as you probably imagine that rests on the
18 fact that we have been there well over 100 years, but
19 that is not what we are arguing today.

20 The complaint alleges that the operation of this
21 rail line now constitutes a nuisance, which has
22 decreased the market value of their property. As the
23 Court knows this is a complaint for declaratory
24 judgment.

1 So they are seeking this Court's guidance on
2 whether or not this set of facts states a cause of
3 action either against APCO or against Norfolk Southern
4 for inverse condemnation damages.

5 We believe based on what they have alleged and
6 what is before the Court, claims have to be dismissed
7 and we are going to argue three basic reasons they
8 have to be dismissed today.

9 The first reason is that these claims are
10 unquestionably bared by the preemption provision of
11 the Interstate Commerce Commission Termination Act and
12 that is going to be what we spend most of our time on.

13 Secondly, we don't believe that what is alleged
14 here is a taking that gives rise to any sort of
15 inverse condemnation claim. In essence they don't
16 allege that Norfolk Southern did anything.

17 Thirdly, we don't believe that the damage that
18 they have alleged and are claiming in these suits is
19 the type of damages that you can recover in an inverse
20 condemnation claim or quite frankly any other claim
21 that they are allowed to bring at least against the
22 railroad.

23 Probably no complaint, there is a handful of
24 things we want to emphasize that is undisputed because

1 that is all we can really follow, all we can really
2 rely on. It is undisputed and it is specifically
3 alleged that Norfolk Southern is a public service
4 corporation and they have delegated dominating power
5 by the legislature and that they operate a rail line
6 adjacent to APCO's property. That is in paragraph 14.

7 The complaint says APCO constructed their
8 transmission line, again, on the property between our
9 property and the Schillings property. That is on
10 paragraph 7.

11 The complaint alleges that the rail line and the
12 transmission lines were both erected for public
13 purposes, that is paragraph 15.

14 The complaint alleges that the Plaintiff's claim
15 that the rail line constitutes a nuisance by virtue of
16 and I quote, "noise and vibration as all of the
17 discharge of smoke, dust, dirt and other particulars."
18 That is on paragraph 15. It is a nuisance for these
19 reasons.

20 They alleged that this nuisance interferes with
21 the use and enjoyment of their property. That is
22 paragraph 14.

23 They alleged that their property is less
24 valuable, marketable and desirable, paragraph 16.

1 Now what they don't allege, which I think is
2 relevant as well, they do not allege a property
3 interest in APCO's property. In other words no where
4 do they allege we have a property interest in the land
5 on which APCO constructed its transmission lines. Nor
6 do they allege ---

7 THE COURT: What about those cases, and I have
8 not read one in a long time, cases where lawsuit is
9 where someone has built a building between you and the
10 sea shore and you can no longer see it?

11 MR. BRYANT: No, I don't believe that that is the
12 same thing. I will get to that sort of argument. We
13 think by or deals with that sort of argument. But
14 even in those cases they are not claiming a property
15 interest in the property on which the other buildings
16 are put and those buildings are very rarely buildings
17 that are put to a public use. Nor do they claim any
18 property interest in the trees that are growing on
19 APCO's property.

20 And finally, they don't allege negligence on the
21 part of either APCO or Norfolk Southern. It is
22 against that factual backdrop that we argue, first our
23 preemption defense. And we believe, Your Honor, this
24 will resolve the suit in its entirety.

1 The Interstate Commerce Commission Termination
2 Act was passed in order to shield railroads from what
3 amounted to a collection of state and local
4 regulations, common law lawsuits, all sorts of things
5 brought by parties in various states against railroads
6 that have a negative effect on operating in interstate
7 commerce.

8 A railroad would be in North Carolina subject to
9 a number of different regulations, rules, common law
10 claims aimed at the transportation, aimed at rail
11 traffic and then they cross over to Virginia and you
12 get a whole new set. You go from one county to the
13 other and the United States Congress said we have got
14 to stop this and so they passed the Interstate
15 Commerce Commission Termination Act. And it provides
16 that the Surface Transportation Board is going to have
17 exclusive jurisdiction over anything related to
18 transportation by a rail carrier. It is found in 49
19 U.S.C. Section 10501(b) and it reads and I quote, "the
20 jurisdiction of the Surface Transportation Board
21 over," it goes on, but one of the things is,
22 "transportation by rail carriers is exclusive." It
23 goes on to say that it preempts the remedies provided
24 under federal or state law.

1 It is rooted in the supremacy clause of the
2 federal constitution which provides that state law
3 remedies, the law of the United States shall be the
4 supreme law of the land, anything in the Constitution
5 or laws of any state to the contrary, notwithstanding.
6 That is what it is rooted in. The federal courts have
7 made clear interpreting ---

8 THE COURT: Let me interrupt you?

9 MR. BRYANT: Sure.

10 THE COURT: If that is the case, why couldn't you
11 remove this to the Surface Transportation Board simple
12 move it ---

13 MR. BRYANT: We couldn't move it to the Surface
14 Transportation Board. We could petition the Surface
15 Transportation Board and in many instances parties do
16 ask for state courts to stay proceedings so that they
17 can go before the Surface Transportation Board. Keep
18 in mind and we still could do that, depending on
19 whether or not you feel comfortable deciding the
20 preemption issue. The difference is this, the Surface
21 Transportation Board can only decide the preemption
22 issue and ---

23 THE COURT: The preemption issue could carry
24 over?

1 MR. BRYANT: That is exactly right.

2 THE COURT: They are expert in this and that is
3 all they do, why would you go there first?

4 MR. BRYANT: Well because it was filed here first
5 and we can't dismiss this based on the fact that the
6 Surface Transportation Board can decide this. Let me
7 just give you a little background because I think the
8 reason ---

9 THE COURT: The reason I am raising this is
10 because I have shown you my schedule ---

11 MR. BRYANT: Sure.

12 THE COURT: We are talking about not a couple
13 months, but a long time and I am going to be taking
14 stuff home tonight to try to get these opinions done
15 before I retire.

16 And if the Surface Transportation Board is a lot
17 faster, there is an excellent chance that I could end
18 up in something like this and not get it done before I
19 retire and that is the reason I asked. And I thought
20 that when I first got the file I had a chance to rule
21 on that, ---

22 MR. BRYANT: Well, Your Honor, it is funny you
23 should say that, let me tell you how these things are
24 typically decided. States court very often decide the

CERTIFICATE OF REPORTER

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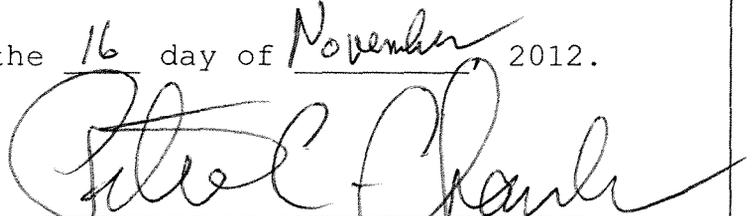
STATE OF VIRGINIA AT LARGE:

I, PETER C. CHARUKA, Notary Public for the Commonwealth of Virginia, at Large, do hereby certify that the Hearing held on October 29, 2012, was by me reduced to machine shorthand in the presence of the parties, afterwards transcribed under my direction by means of a computer, and that to the best of my knowledge the foregoing is a true and correct transcript of the Hearing as aforesaid.

I further certify that this Hearing was taken at the time and place in the foregoing caption certified.

I further certify that I am not a relative, counsel or attorney for either party or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Roanoke, Virginia, on this the 16 day of November 2012.


PETER C. CHARUKA, Notary Public

NOTARY REGISTRATION NUMBER 108524
MY COMMISSION EXPIRES July 31, 2014

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

RICHARD SCHILLING and
BARBARA SCHILLING,

Complainants,

v.

Case No. CL11-1047

APPALACHIAN POWER COMPANY and
NORFOLK SOUTHERN RAILWAY COMPANY,

Respondents.

ICC:
G Bryant
H Howell
R Cranwell
P Anderson
SCAN
11-14-12

AGREED ORDER

THIS DAY came the parties, by counsel, on Defendant Norfolk Southern Railway Company's Demurrer; AND, after consultation with the presiding Judge, the Chief Judge, and counsel for all parties of record, the parties agreed and it is hereby ORDERED (1) that this matter be transferred from the Honorable ~~Patrick~~ Robert P. Doherty, Jr. to the Honorable Clifford R. Weckstein, (2) that Norfolk Southern may file a petition with the Surface Transportation Board seeking resolution of its defense of preemption pursuant to the Interstate Commerce Commission Termination Act, and (3) that the pending Demurrers of Norfolk Southern Railway Company and Appalachian Power Company be scheduled for a hearing before Judge Weckstein on December 10, 2012 at 9:30 a.m.

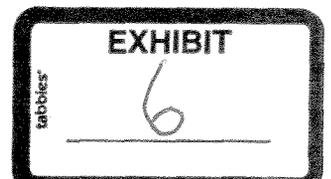
Nothing in this Order shall be construed as in any way restricting the rights of the parties to seek relief of the Court not specifically addressed herein.

Dated this 14th day of November, 2012.

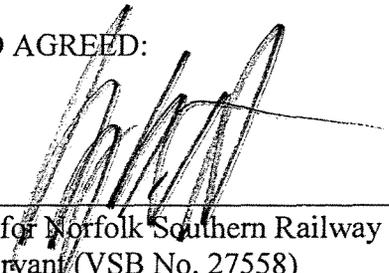
Robert P. Doherty Jr.
Judge

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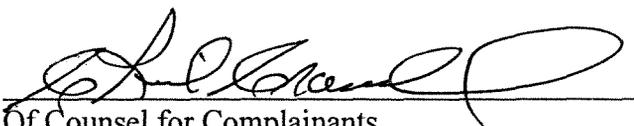
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DEPUTY CLERK



SEEN AND AGREED:

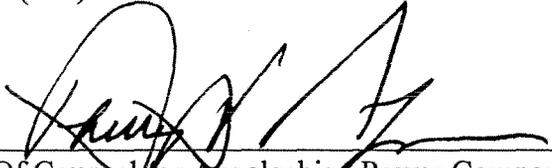


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Present: Kinser, C.J., Lemons, Millette, Mims, and
McClanahan, JJ., and Lacy and Koontz, S.JJ.

TIMOTHY BYLER

v. Record No. 112112

VIRGINIA ELECTRIC AND POWER COMPANY

OPINION BY
SENIOR JUSTICE LAWRENCE L. KOONTZ, JR.
September 14, 2012

ROGER D. WOLFE, ET AL.

v. Record No. 112113

VIRGINIA ELECTRIC AND POWER COMPANY

FROM THE CIRCUIT COURT OF FAUQUIER COUNTY
Jeffrey W. Parker, Judge

In these appeals we consider whether Article I, Section 11 of the Constitution of Virginia provides for a cause of action by a landowner for inverse condemnation when the allegation of the complaint is that the landowner's property has been "damaged" by a diminution in value resulting from a public utility's construction and operation of an electrical transmission line for public use on nearby property.

BACKGROUND

These cases were consolidated for trial and arise from substantially similar facts. On May 19, 2011, Timothy A. Byler filed in the Circuit Court of Fauquier County a complaint for declaratory judgment against Virginia Electric



and Power Company ("VEPCO") alleging that he was the owner of "[a] developable tract of land consisting of 1 acre with improvements" at 2303 Courthouse Road in Catlett, Virginia. Byler alleged that as the result of the construction by VEPCO of 230 kilovolt electric transmission lines "[o]n land abutting and in proximity to" Byler's property, the property was "less valuable, marketable and desirable" and "as a whole suffered and suffers a diminution in value."¹ Byler further alleged that the property was no longer suitable for its former "highest and best use," which was as a residence. Pursuant to Code § 8.01-187, Byler requested that the court find the damage constituted an inverse condemnation under Article I, Section 11 and empanel a jury of commissioners to determine just compensation and other relief as provided for in Code § 25.1-420.

Also on May 19, 2011, Roger D. Wolfe and Kathleen E. Wolfe filed a substantially similar complaint against VEPCO alleging that they were the owners of "[a] developable tract of land consisting of 2.35 acres with improvements" at 2381 Courthouse Road in Catlett. As Byler had alleged in his

¹ The construction of the lines was pursuant to a certificate of public convenience and necessity issued by the State Corporation Commission ("SCC") to VEPCO on March 10, 2010, and was part of a larger project for the construction of a 500 kilovolt transmission line from Warren County to Loudoun County approved by the SCC in 2008.

complaint, the Wolfes alleged that the construction of the transmission lines caused a diminution in value of their property because it was not possible to "buffer their prime developable site and home from [the transmission lines'] blighting effects." They further alleged that the proximity of the transmission lines to their property created a "strong negative resistance" in the market for "using [their] property as a residence." The Wolfes sought an award of damages for inverse condemnation under Code §§ 8.01-187 and 25.1-420.²

VEPCO filed identical demurrers and supporting briefs to both complaints, asserting that the complaints failed to state a claim for inverse condemnation because no property right belonging to Byler and the Wolfes was actually taken or damaged by the construction of the transmission lines, and further that the complaints did not allege that the properties had been deprived of all economic value as a result of the placement of the lines in proximity to the properties. See, e.g., City of Virginia Beach v. Virginia Land Investment Ass'n., 239 Va. 412, 416-17, 389 S.E.2d 312, 314 (1990);

² Both complaints also asserted a claim for monetary damages for common law nuisance. VEPCO contended that this claim was barred by the doctrine of legislative authorization. See, e.g., State Hwy. & Transp. Comm'r v. Lanier Farm, Inc., 233 Va. 506, 510-11, 357 S.E.2d 531, 533-34 (1987). The circuit court sustained VEPCO's plea in bar and dismissed the nuisance claims. Byler and the Wolfes have not appealed the dismissal of their separate counts for common law nuisance.

Commonwealth v. County Utilities Corp., 223 Va. 534, 542, 290 S.E.2d 867, 872 (1982). Relying on Lambert v. City of Norfolk, 108 Va. 259, 266, 61 S.E. 776, 778 (1908), VEPCO further contended that "diminution in value alone cannot be the basis of an inverse condemnation claim."

Byler and the Wolfes responded to the demurrers by asserting that their complaints "put[] VEPCO on notice as to the nature and character of [their] claim[s]" for inverse condemnation and, thus, were sufficient to survive a demurrer. They maintained that the "blighting effects" of the transmission lines "could be anything from noise, smoke, or dust to the interference with light, air, or view or one of the other appurtenant rights to property," which would constitute a physical interference with those rights and thus constitute "damage" under Article I, Section 11. Accordingly, they contended that inquiring "into the nature of the blighting effects" was a disputed issue of fact to be developed through a bill of particulars or at trial.

The circuit court conducted a hearing on VEPCO's demurrers on August 26, 2011. The parties reiterated the contentions previously made in their pleadings. The court stated its rationale for sustaining the demurrers, which it subsequently adopted by reference in final orders entered at the conclusion of the hearing. The court opined that there

was "no taking at all," but "simply . . . the allegation of blighted property." Accordingly, because the complaints did not allege "that the entire property has been rendered useless" and "[t]he property can still be used," there was no cause of action for inverse condemnation on the facts as alleged. The court further opined that even if given the opportunity to amend, the complainants could not allege facts to support an allegation that their property had lost all economic value. Accordingly, the court sustained the demurrers with prejudice, rather than granting leave to amend.³

We awarded appeals to Byler and the Wolfes to address the following assignment of error:

The circuit court erred by holding that a damaging under Article I, Section 11 of the Constitution of Virginia only occurs when a property has been rendered totally useless by a condemnor's project.

DISCUSSION

As relevant to the issue raised in these appeals, Article I, Section 11 of the Constitution of Virginia provides, "no person shall be deprived of his . . . property without due process of law [and] the General Assembly shall not pass . . . any law whereby private property shall be taken or damaged for

³ Although counsel for Byler and the Wolfes indicated during a colloquy with the circuit court that he "can allege" the property had been deprived of all economic value, error has not been assigned to the court's decision not to grant leave to amend.

public uses, without just compensation." (Emphasis added.) Where a property owner believes that his property has been taken or damaged within the meaning of this Constitutional provision and compensation has not been paid, the remedy afforded by statute is for the property owner to file a complaint for declaratory judgment to determine the compensation to be paid. Code § 8.01-187.

Byler and the Wolfes contend that the circuit court erred by concluding that when, as here, there is no physical taking of property through a government-authorized act, an inverse condemnation will be found only where the property has been deprived of all economic use. In applying this standard to a damage claim, they contend that the court essentially applied a standard that "erased the 'damage' clause from the Constitution."

Although VEPCO does not concede that the circuit court's application of the "deprived of all economic use" standard to these cases was error, neither did it offer any defense of that standard in briefing these appeals. Rather, VEPCO responds that even if it is assumed that the court applied the wrong standard, its judgment may nonetheless be upheld under "a right result, wrong reason" analysis because VEPCO further argued below that the complaints failed to state any damage to a property right, but only asserted an economic loss. See

Shipman v. Kruck, 267 Va. 495, 509, 593 S.E.2d 319, 327 (2004); see also Deerfield v. City of Hampton, 283 Va. 759, 767, 724 S.E.2d 724, 728 (2012); Miller v. Highland County, 274 Va. 355, 372, 650 S.E.2d 532, 540 (2007).

The "deprived of all economic use" standard is derived from claims that a regulatory action by the government has resulted in a "categorical taking" which results in "a deprivation of all economic use of [the] property" without the acquisition of any right in the property by the government. Board of Supervisors of Culpeper County v. Greengael, L.L.C., 271 Va. 266, 287, 626 S.E.2d 357, 369 (2006). "[A] property owner may seek compensation for a categorical taking only when the state is exercising regulatory power over the 'bundle of rights' that the owner acquired when first obtaining title to the property." City of Virginia Beach v. Bell, 255 Va. 395, 400, 498 S.E.2d 414, 417 (1998). Thus, we agree with Byler and the Wolfes that this standard has no application to a claim for damage to an owner's property that is not the result of a regulatory restriction on the owner's property, but instead results from the public use of land in proximity to the owner's property.

However, we also agree with VEPCO that the circuit court's error in referencing this standard does not end the inquiry, because the court was presented with the alternative

argument that the complaints did not allege an actual taking of the property or damage to any appurtenant property right, but only asserted an economic loss resulting from "the infringement on [that] 'beneficial use and enjoyment' of the [p]roperty." If VEPCO is correct that a complaint for inverse condemnation must allege an actual taking of the property, physical damage to the property itself, or interference with a property right, and that the complaints in these cases did not do so, then, as we are in an equal position with the court below to judge the sufficiency of the pleadings and will do so de novo, Lee v. City of Norfolk, 281 Va. 423, 432, 706 S.E.2d 330, 334 (2011), the court's judgment may be upheld on that basis. See Perry v. Commonwealth, 280 Va. 572, 581-82, 701 S.E.2d 431, 436-37 (2010) (holding that if the factual record supports the determination, a judgment may be upheld on any basis apparent in the record).

Byler and the Wolfes assert that "an actual physical invasion of the owner's real estate" is not required to establish that the property has been damaged by a physical taking of adjoining land. Tidewater Ry. Co. v. Shartzler, 107 Va. 562, 569, 59 S.E. 407, 410 (1907). Rather, they contend that Shartzler, Lambert, and City of Lynchburg v. Peters, 156 Va. 40, 49, 157 S.E. 769, 772 (1931), all stand for the principle that the "damage" clause of Article I, Section 11 is

merely a waiver of sovereign immunity which subjects the Commonwealth, or others authorized to exercise the Commonwealth's power of eminent domain, to be "liable in the same manner as a private party under common law."

Byler and the Wolfes concede that Shartzner, Lambert, and Peters all included a requirement that "the common law at [that] time restricted actions for damages [against private parties] to those physically impacting a property or interfering with a right appurtenant to property." They contend, however, that in the time intervening between Peters, the last case to address directly this issue, and the present, the common law has been greatly expanded to include claims for injury to property against private parties based solely on economic considerations.⁴ Thus, they contend that we should now recognize that a property can be "damaged" within the meaning of Article I, Section 11, when a public use, such as the construction and operation of the electrical transmission lines at issue here, on adjacent or proximate property results in a diminution of value of their property by interfering with

⁴ Byler and the Wolfes principally rely upon Foley v. Harris, 223 Va. 20, 286 S.E.2d 186 (1982), to support their contention that a private party may be held liable for monetary losses that result from "aesthetic" damage to property. This reliance is misplaced. The basis for liability in Foley arose from the violation of a restrictive covenant, not a common law tort.

the use and "quiet enjoyment" of their property. We decline to make such a sweeping revision to the law of eminent domain.

First, we do not agree with the contention that the function of the "damage" clause of Article I, Section 11 is to waive sovereign immunity for the Commonwealth and its proxies in order to subject them to liability as private parties for any damage asserted by a property owner that might conceivably arise from a public use of land adjoining or proximate to the property allegedly damaged. Rather, Article I, Section 11 has always been interpreted as a waiver of immunity for having to pay compensation for the actual taking of property or damaging of the property or a property right. As we explained in

Richmeade, L.P. v. City of Richmond:

Taking or damaging property in the constitutional sense means that the governmental action adversely affects the landowner's ability to exercise a right connected to the property. Thus, an action for inverse condemnation is an action seeking redress for the government's action in limiting property rights the landowner holds. In that regard, the act giving rise to the [claim] is not an act aimed at the property, but rather an act that limits the landowner's ability to exercise his property rights without paying the landowner for that limitation.

267 Va. 598, 602-03, 594 S.E.2d 606, 609 (2004) (emphasis added; citations omitted); see also Board of Supervisors v. Omni Homes, Inc., 253 Va. 59, 72, 481 S.E.2d 460, 467 (1997), overruled in part on other grounds as stated in Greengael, 271 Va. at 287 n.12, 626 S.E.2d at 369 n.12; Peters, 156 Va. 40,

49, 157 S.E. 769, 772 (1931). Thus, the long-standing rule in Virginia has been that a "partial diminution in the value of property [is] compensable only if it results from dislocation of a specific right contained in the property owner's bundle of property rights." Omni Homes, 253 Va. at 72, 481 S.E.2d at 467 (citing Lambert, 108 Va. at 268, 61 S.E. at 778-79); see generally Livingston v. Virginia Dep't. of Transp., 284 Va. 140, 155-57, 726 S.E.2d 264, 273-74 (2012) (distinguishing physical damage to property from damage to an appurtenant property right in the context of an inverse condemnation).

Byler and the Wolfes did not allege in their complaints that the presence of the transmission lines was interfering with their ability to exercise any specific property right. Rather, they alleged that their properties were "less valuable, marketable and desirable" because they were no longer suitable for their "highest and best use" as residential properties. Article I, Section 11 " 'does not, however, authorize a remedy for every diminution in the value of property that is caused by a public improvement.' " Shartzler, 107 Va. at 571, 59 S.E. at 410 (quoting Eachus v. Los Angeles Consol. Elec. Ry. Co., 37 P. 750, 751 (Cal. 1894); see also Lambert, 108 Va. at 267, 61 S.E. at 778 (quoting Shartzler with approval). There must be some " 'damage to the property itself, [that] does not include a mere infringement

of the owner's personal pleasure or enjoyment. Merely rendering private property less desirable for certain purposes, or even causing personal annoyance or discomfort in its use, will not constitute the damage contemplated by the constitution.' " Shartzner, 107 Va. at 571, 59 S.E. at 410 (quoting Eachus, 37 P. at 751). Proximity to a public use of land may "render the property less desirable, and even less salable; but this is not an injury to the property itself, so much as an influence affecting its use for certain purposes." Id. at 572, 59 S.E. at 410.

Accordingly, we hold that the complaints in these cases did not, and could not, state a cause of action for declaratory relief for inverse condemnation when the sole damage alleged was a diminution in value arising from the public use of proximately located property. Thus, while the circuit court applied the wrong standard in reviewing the pleadings, its judgment sustaining the demurrers was nonetheless correct under the proper standard.

CONCLUSION

For these reasons, we will affirm the judgment of the circuit court sustaining VEPCO's demurrers to the complaints for declaratory judgment.

Record No. 112112 - Affirmed.
Record No. 112113 - Affirmed.