PUBLIC SERVICE EASEMENTS

REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1967

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Report of The

Virginia Advisory Legislative Council

Richmond, Virginia, October 6, 1967

To: Honorable Mills E. Godwin, Jr., Governor of Virginia
and The General Assembly of Virginia

During the interim between the 1964 and 1966 Regular Sessions of the General Assembly of Virginia, the Virginia Advisory Legislative Council conducted a thorough study into matters relating generally to the acquisition of easements by public service companies. That study was concerned mainly with determining the extent to which easements acquired by one public service company might be used by other public service companies, and the extent to which such multiple use should be required by law or administrative action to conserve Virginia's vital land resources. The proliferation of such easements throughout the State has aroused great concern among the various factors within the State concerned with land use economics as well as individual landowners whose agricultural and timberlands are so vitally affected.

It was determined in the previous study that due to Virginia's rapidly accelerating growth in population and in industrial and urban development there has been a tremendous increase in the demand for all types of utility services and continued refinement in utility services presently provided. It was further acknowledged that the growth in these critical areas would probably continue at an ever accelerating pace in the foreseeable future and the demand for utility services will most likely increase in like proportion.

Adequate utility services are vitally necessary for today's society. This is acknowledged even by those whose lands are subjected to easements for the installation of needed facilities. The principal concern in the minds of those affected is directed to urging public service companies to make the most effective use of present easements. They urge that public service companies should be encouraged to use their easement jointly, where possible, rather than acquiring new easements or rights-of-way each time new or refined services are extended.

As to joint use of easements, the previous study concluded that within the limits of present technology and with adequate regard for safety, reasonably adequate utility services cannot be provided without the acquisition of extensive easements and rights-of-way by public service companies. The previous study also concluded that to the extent economically feasible, public service companies generally are utilizing their easements to the fullest; and, where possible, through joint use agreements, are using easements of other public service companies. Since easements are very expensive to acquire, the sheer economics of the situation is a very strong motivating factor in the direction of maximum joint utilization.

But what of the farmer or timberland owner whose land is taken, or the use thereof restricted, due to such easements? Due to time limitations in the previous study, it was not possible to enlarge the scope of the study to include all aspects of the problem, especially its full effect upon the

individual landowner. For this reason it was recommended to the General Assembly that the study be continued with special emphasis on this latter area.

Thus, the 1966 Session of the General Assembly of Virginia, by House Joint Resolution No. 19, directed the Virginia Advisory Legislative Council to continue the study concerning public service easements. The Resolution is as follows:

HOUSE JOINT RESOLUTION NO. 19

Directing the Virginia Advisory Legislative Council to study matters relating to use of easements by public service companies.

Whereas, the General Assembly, at its 1964 Regular Session, recognized the need for conserving Virginia's land resources and also recognized the need for adequate utility services to meet the growing industrial development of the State; and

Whereas, the Virginia Advisory Legislative Council was directed to study the problems relating to the joint use of easements by public service companies and the State Highway Department; and

Whereas, the study conducted by the Virginia Advisory Legislative Council indicated that:

(1) Increasing amounts of the State's land resources are being taken each year for right-of-way purposes;

(2) Substantial technical problems are encountered and presently prevent joint use of easements in many cases;

(3) Although most public service companies and the State Highway Department presently have joint use agreements to some extent, the number and scope of such agreements could be enlarged and technical improvements could be made which would result in the worthy objective of conserving Virginia's land resources for the future;

(4) Some difficulties are encountered by landowners in securing proper tax adjustments when land is taken for the purpose of easements; and

(5) The accumulation of brush and debris along utility rights-of-way may cause unsightly conditions and possible fire hazards; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the public service companies operating in this State, including the State Highway Department, are urged to make joint use of rights-of-way where feasible and consistent with safe, adequate and efficient service to the public, and that studies be made towards this end and all departments of the State, including the State Highway Department and the State Corporation Commission, are directed to cooperate in this endeavor; and, be it further

Resolved, That the General Assembly hereby commends those progressive public service companies which are already making extensive joint use of easements to conserve land in this State; and, be it further

Resolved, That the Virginia Advisory Legislative Council is directed to continue its study of the matters hereinabove set forth; and such future study should also specifically consider the advisability of granting the

State Corporation Commission the express power to compel joint use where feasible and to fix the terms and conditions thereof; and, be it further

Resolved, That the Clerk of the House of Delegates is directed to send copies of this resolution to the State Highway Commissioner and the State Corporation Commission and to each public service company operating in Virginia.

Pursuant to this resolution the Virginia Advisory Legislative Council selected C. W. Cleaton, of South Hill, member of the House of Delegates and member of the Council, to serve as Chairman of the Committee to make the initial study and report to the Council. The following individuals were selected to serve on the Committee with Mr. Cleaton: Lyman C. Harrell, Jr., Attorney and member of the House of Delegates, Emporia; R. H. Lipscomb, Assistant General Attorney, Seaboard Air Line Railroad Company, Richmond; J. C. Lucy, Merchant, Lawrenceville; T. Justin Moore, Jr., Senior Vice-President, Virginia Electric and Power Company, Richmond; William B. Moore, Attorney, Arlington; Stanley A. Owens, Attorney and member of the House of Delegates, Manassas; Harold H. Purcell, Judge of Circuit Court, Louisa; duVal Radford, Attorney and former member of the House of Delegates, Bedford; Dr. Clifford M. Siegel, Professor of Electrical Engineering, University of Virginia, Charlottesville; and Jack E. Smith, Manager, Mecklenburg Electric Cooperative, Chase City.

The Committee met and organized and elected T. Justin Moore, Jr. as Vice-Chairman. G. M. Lapsley and Robert L. Masden served as Secretary and Recording Secretary, respectively, to the Committee. Technical assistance was rendered by W. S. G. Britton, Director of Programming and Planning, Department of Highways, Richmond; Frank S. Givens, Jr., Associate Chief Engineer, State Corporation Commission, Richmond; Lee B. Younger, Director, Division of Public Utility Taxation, State Corporation Commission, Richmond; and F. C. Forberg, Director, Division of Real Estate Appraisal and Mapping, State Tax Department, Richmond.

The Committee completed its study and made its report to the Council. The Council has reviewed the report of the Committee and makes the following recommendation for the reasons indicated:

RECOMMENDATION

That Commissioners of the Revenue be required to reassess land affected by public service easements and rights-of-way upon request of the owner of the land affected by such easements or rights-of-way.

JOINT USE OF EASEMENTS

During the previous study, an attempt was made to secure information on the exact amount of land in Virginia which is devoted to public service easements and rights-of-way. While the Committee was unable to secure completely accurate information on the exact amount of land owned by public utilities or under easement by them, the Committee became painfully aware of the burgeoning problems created by the proliferation of public service easements throughout the entire State.

It was the consensus of the Committee that before any specific recommendations could be made to the Council in this study, a further effort should be made to secure accurate information with regard to the number of acres of Virginia land now devoted to this use. With the assistance of the State Corporation Commission and the Department of Highways, the following carefully structured questionnaire was sent to all electric, telephone and gas public utilities and to all railroad and oil pipeline companies operating in Virginia.

RAILROADS

	Estimate
Miles of right of way owned:	.....
Acres in right of way:	.....
% acres in open or developed land:	.....
% acres in wooded area:	.....
Miles of right of way in multiple use at present:	.....

Miles of right of way acquired:

within last 5 years .....; last 2 years.....

% of total right of way acquired subject to joint use:

within last 5 years .....; within last 2 years.....

NOTE:

The term "wooded land" shall mean land in timber or pulpwood; land from which timber has been cut with the stumps in place and growing brush; and land with uncontrolled brush growing ten feet or more in height. Fence lines growing in brush or trees will not, in themselves, be considered timber land.

The term "developed land" shall include all land in easements under franchise rights in towns or cities and in subdivisions with established streets outside the municipalities.

The term "open land" shall include land devoted to agriculture, grazing, orchards, and similar uses.

Where the easement is adjacent to another easement such as a highway, only the characteristic of land occupied on the utilities' side of the joint use will be considered.

ELECTRIC AND TELEPHONE COMPANIES

Land Used by Rights of Way

	Transmission or Toll Line	Distribution Line
Miles of pole or tower line:	.....	.....
Average width of right of way:	.....	.....
Estimated % miles adjacent to highway or other easement:	.....	.....
Acres used by easement not included in highway or other easement:	.....	.....
Estimated % acres in open or developed land:	.....	.....
Estimated % acres in wooded land:	.....	.....
Pole line miles in joint use at present:	.....	.....

within last 5 years .....; within last 2 years .....

% of total easements acquired subject to joint use:

within last 5 years .....; within last 2 years .....

NOTE:

The term "wooded land" shall mean land in timber or pulpwood; land from which timber has been cut with the stumps in place and growing brush; and land with uncontrolled brush growing ten feet or more in height. Fence lines growing in brush or trees will not, in themselves, be considered timber land.

The term "developed land" shall include all land in easements under franchise rights in towns or cities and in subdivisions with established streets outside the municipalities.

The term "open land" shall include land devoted to agriculture, grazing, orchards, and similar uses.

Where the easement is adjacent to another easement such as a highway, only the characteristic of land occupied on the utilities' side of the joint use will be considered.

OIL AND GAS TRANSMISSION AND DISTRIBUTION PIPE LINES

Land Used by Rights of Way

	Transmission	Distribution
Miles of pipe line:	.....	.....
Miles of pipe line in roads, streets or other easements:	.....	.....
Miles of pipe line in easements across private property:	.....	.....
Average width of easement:	.....	.....
Acres covered by easement:	.....	.....
Acres covered by owned land for right of way:	.....	.....
Estimated % of acres through open and developed land:	.....	.....
Estimated % of acres through wooded land:	.....	.....

Miles of easements acquired:

within last 5 years .....; within last 2 years .....

% of total easements acquired subject to joint use:

within last 5 years .....; within last 2 years .....

NOTE:

The term "wooded land" shall mean land in timber or pulpwood; land from which timber has been cut with stumps in place and growing brush;

and land with uncontrolled brush growing ten feet or more in height. Fence lines growing in brush or trees will not, in themselves, be considered timber land.

The term "developed land" shall include all land in easements under franchise rights in towns or cities and in subdivisions with established streets outside the municipalities.

The term "open land" shall include land devoted to agriculture, grazing, orchards, and similar uses.

Where the easement is adjacent to another easement such as a highway, only the characteristic of land occupied on the utilities' side of the joint use will be considered.

Replies were received from 100 companies which included all the major companies and all the smaller companies except a few without significant plants in operation. Municipal utility operations were not considered since, with a few exceptions, these operations are within or adjacent to the corporate limits. Water and sewer companies were not requested to file estimates since most of this service is by municipalities, sanitary districts, or authorities. The numerous private water companies are small, with two exceptions, and have most of their pipe lines in streets or roads.

It is believed that the figures secured give a reasonable picture of the use of land for easements as of January 1, 1967 and the joint occupation of such easements. It is evident that the acquisition and release of easements goes on continually as public utility service is expanded.

The summary shows no significant increase in the miles of easements acquired in the last two years compared to the acquisition over the last five-year period. A considerable portion of the acquired easements is subject to joint use especially for electric and telephone distribution.

The term "subject to joint use" covers the contractual arrangements between certain utilities and between the utilities and the Highway Department whereby the utility plant or the right-of-way may be jointly used upon application and under stated conditions. Some of the telephone companies and the electric companies have written agreements whereby the pole line of one may be used by the other at an annual rental at certain voltages. The Highway Department allows joint occupation of certain highway rights-of-way under conditions specified in their standard contract.

A questionnaire was also sent to the Highway Department. Their responses are included in the following summary which we believe is very accurate and reliable.

PUBLIC SERVICE COMPANY EASEMENTS

	Gas and Oil Pipe Lines	Electric Utilities	Telephone and Telegraph	Railroads	Total
Miles of Pole Line, Pipe Line or Railroad Right of Way	7,836	80,800	31,286	4,151	124,073
Acres in Easements or Right of Way	14,454	274,162	30,743	49,371	368,730
Acres adjacent to Open or Developed Land	7,567	171,975	16,014	32,801	228,357
Acres adjacent to Wooded Land	6,891	102,186	14,365	16,570	140,012
Miles of Pole Line or Right of Way in Joint Use		20,556	7,609	534	28,699
Miles of Pole Line adjacent to Highway Right of Way		36,433	27,310		63,743
Miles of Pipe Line in Roads or Streets	5,244				5,244
Miles of Easement Acquired					
Last 5 years	1,234	5,682	3,203	34	10,153
Last 2 years	90	2,403	1,571	33	4,097
Acres Owned for R/W	320			49,371	49,691
Companies Reporting	23	23	35	19	100
Miles of Highway Right of Way Subjected to Joint Use Agreements	1,397.5	3,464.1	7,324.3		12,185.9
Granted Within last 5 years	423.8	641.9	3,009.4		4,075.1
Granted Within last 2 years	224.2	261.7	1,605.0		2,090.9

SUMMARY—OIL AND GAS PIPE LINES

Oil and gas distribution and transmission lines were summarized together since there is a similarity in their requirements and use of rights of way. The transmission lines are largely across country while the distribution lines, largely gas, are in the streets and roads near metropolitan areas.

The summary of the replies from 23 gas distribution and transmission companies and oil transmission companies with 4 small gas distribution companies not reporting is as follows:

	Miles of Line	Miles in Rds. or Sts.	Acres in Easements	Acres in Open Land	Acres in Wooded Land
Distribution	5,506	5,074	626	536	91
Transmission	2,330	170	13,828	7,031	6,800
Total	7,836	5,244	14,454	7,567	6,891

There were approximately 2,590 miles of line across private property with average rights of way varying from 9 to 150 feet in width. Some of the transmission lines acquire a wider right of way for construction which reverts to a narrower right of way when the line is in operation. About 320 acres were reported as owned for right of way purposes. The companies reported 1,234 miles of right of way acquired in the last 5 years with 90 miles acquired in last 2 years, a drop due to completion of major oil and gas transmission lines across the State. A very small amount was subject to joint use.

SUMMARY—TELEPHONE AND TELEGRAPH UTILITIES

The estimates on use of easements for telephone and telegraph companies were broken down between toll pole lines and distribution pole lines. The buried plant of the companies, largely the cable plowed into the ground which is increasing rapidly was not requested when the company did not clear the right of way during the plowing and does not contemplate maintaining a cleared right of way in the future.

The replies covered 34 operating telephone companies and one telegraph company with 3 small telephone companies not having significant mileage of line unreported. The summary of the estimates follows:

	Miles of Pole Line	Acres in Easements	Acres in Open Land	Acres in Wooded Land	Miles in Joint Use
Distribution	28,300	25,590	13,418	11,707	7,234
Toll	2,986	5,153	2,596	2,658	375
Total	31,286	30,743	16,014	14,365	7,609

The average width of right of way varied from 2 to 25 feet depending on use of cable or open wire with most of the companies reporting 10 feet. An estimated 27,310 miles of pole line was adjacent to but not on highway right of way. The trend in telephone construction is away from open wire to cable which requires less cleared right of way and from overhead lines to buried cable which, on distribution routes, requires little initial or maintenance clearing. One company reports that it has been plowing 300 miles of cable per year for the last five years. From reports to the State Corporation Commission, telephone companies had 400,691 circuit miles of buried cable in 1964, 634,864 circuit miles in 1965 and an indicated 910,509 circuit miles in 1966 illustrating the trend in this direction.

The telephone utilities acquired 3,203 miles of right of way in the last five years of which 1,571 was acquired in the last two years. Of that acquired in the last two years, an estimated 1,058 miles or 67% was subject to joint use largely through contracts with the electric utilities. The Highway Department shows 7,324 of road right of way subject to joint use with the telephone companies.

SUMMARY—ELECTRIC UTILITIES

The questionnaire on use of easements for electric utilities separated the transmission lines at higher voltages from the distribution lines. The replies are based on the miles of pole or tower lines. Miles of underground and buried plant for electric utilities is not significant outside of cities and

There are 8 privately owned utilities and 16 cooperatives rendering service in the State. Replies were received from all but one small private company having less than 30 miles of line. The area covered by 16 towns

and cities offering municipal service was not included. The summary of the estimates follows:

	Miles of Pole Line	Acres in Easements	Acres in Open Land	Acres in Wooded Land	Miles in Joint Use
Distribution	75,373	209,879	144,948	64,931	20,345
Transmission	5,427	64,283	27,027	37,255	211
Total	80,800	274,162	171,975	102,186	20,556

The average width of right of way varied from 15 feet to 50 feet on distribution lines and from 50 to 150 feet on transmission lines. The width was affected by the 35,919 miles of distribution and 514 miles of transmission classed as adjacent to highways. A pole or tower line was considered adjacent to the highway right of way if the required cleared space on one side of the pole line overlapped the highway right of way and the line itself was not on the highway right of way. The Highway Department shows 3,464 miles of right of way subject to joint use with the electric utilities. This is road right of way on which pole lines are or can be placed under existing contracts.

The electric utilities acquired 5,682 miles of easement in the last 5 years of which 2,403 miles were acquired in the last 2 years. Of the 2,403 miles acquired in the last 2 years, approximately 1,552 miles or 65% was subject to joint use and the remainder was for high voltage transmission lines or in areas where there were no agreements with the telephone utility.

SUMMARY—RAILROADS

The railroad questionnaire was different since most railway right of way is land owned by the railroad company. No separation was made between main line and branch line for the purposes of this study. Estimates were furnished by nineteen railroads which included their subsidiaries. One small branch line is not included. The estimates are as follows:

Miles of right of way owned	4,151
Acres in the right of way	49,371
Acres adjacent to open or developed land	32,801
Acres adjacent to wooded land	16,570
Miles of right of way in multiple use with other public service companies	534

The companies reported 33.78 miles of right of way acquired in the last 5 years of which 33.04 miles were acquired in the last 2 years. Of this increase 27 miles was the purchase by one of the larger companies of a branch line in operation at the time. Less than one mile was indicated to be in joint use.

MILES OF HIGHWAY RIGHT-OF-WAY SUBJECTED TO JOINT-USE AGREEMENTS WITH—

Oil and Gas Pipeline Companies	
Total	1,397.5
Within the last 5 years	423.8
Within the last 2 years	224.2
Electric Companies	
Total	3,464.1
Within the last 5 years	641.9
Within the last 2 years	261.7

Telephone Companies

Total	7,324.3
Within the last 5 years	3,009.4
Within the last 2 years	1,605.0

In the above figures, the mileage for the last 2 years is included in the last 5 years, which, in turn, is included in the total mileage.

The joint use of right-of-way has been given consideration by the Department for many years. In 1950 a general policy agreement was prepared for the specific purpose of keeping to a minimum the land taken for such use and resulted in an agreement with 22 utility companies operating within the State.

There are many problems connected with the multiple use of highway rights-of-way, and this is now complicated by the requirements and intent of the Federal Beautification Act. There are also requirements of the Bureau of Public Roads that utilities not occupy the right-of-way of limited access roads other than for transverse crossings.

The use of existing rights-of-way for parallel utility construction would normally result in the elimination of all trees on the right-of-way where such utilities were located. This is contrary to the present policy of the Department in trying to maintain natural growth and vegetation along the outer extremities of the right-of-way not needed in its entirety for construction purposes.

In order to further the multiple use of rights-of-way, it may necessitate the consideration of changing the widths of highway rights-of-way so as to provide a utility space far enough away from the traveled roadway so as not to interfere with the aesthetic considerations.

The policies of the Highway Department with respect to use of easements are set forth below:

1. Comprehensive Agreement—Since 1950, the Department has had in existence, and available to any utility company desiring to enter into it, an agreement which has as its primary purpose to limit to a minimum the land taken for public uses. This agreement embraces only non-limited access highway rights-of-way of widths 110 ft. or greater. To date, it has been executed by 23 utilities, most of which are the larger companies. Attached is a list showing the names of the companies and the dates they entered into this agreement.

   This agreement allows the utilities to place their facilities (aerial or underground) along the outer 16 ft. strip of the highway right-of-way. However, with the emphasis being given to aesthetics and beautification of highways, in recent months, we find that some of the new policies for cutting or trimming trees on the right-of-way will be in conflict with existing provisions of this agreement. We now have this conflict in policies under consideration.

   This agreement can be employed by either the utility or the Department in connection with relocation work necessitated by highway project construction or in connection with new or expansion work by the utility company.

2. Relocation of Utilities due to Highway Project Construction—In this regard, the Department enters into numerous formal and informal utility relocation agreements with the various utility owners whose existing facilities are in conflict with proposed highway projects. These agreements are only necessary when the Department is responsible for the costs of the adjustment. There are many factors

which must be considered in determining the method of adjustment and establishing the location of the relocated facilities.

On the Interstate System, which is limited access right of way, the longitudinal occupancy of utilities is not permitted due to restrictions for maintaining the facilities by gaining access from the through traffic roadways or ramps. However, when service roads parallel the Interstate highway, utilities are allowed to occupy this service road right of way.

On the Arterial System, where we are dual laning existing two lane primary highways, we usually affect, and have to relocate, the existing parallel utility facilities. Whether or not the utilities are relocated to edge of the highway right of way depends on such things as the proposed width of the highway right of way, if the utility involved has signed the Comprehensive Agreement, if the right of way is non-limited access, if trees along the outer edge of the right of way will be affected, etc.

On the Secondary and Regular Primary Systems, the highway rights of way are usually of a width which does not permit longitudinal occupancy of pole lines along the outer edge of the highway right of way. However, underground facilities can be and frequently are permitted to be placed under the shoulder, ditch line or sometimes the road surface.

On the Urban System, the prerogative to permit utilities to occupy the street right of way lies with the municipality having jurisdiction. However, recent emphasis on safety, which is being made by the Federal Government on projects where Federal aid is being obtained, may have some effect on the occupancy of poles on these rights of way in the future. Of course, underground utilities have always been permitted on street rights of way in Urban areas.

3. Permits to allow new utility work, or relocation work at utility company expense, to occupy the highway right of way—Over 50,000 permits a year are issued by the Highway Department. Of course, some of these involve commercial and private entrances and the like, but far more than 50% cover requests from utility companies to cross or occupy the highway right of way. In the past several years the issuance of permits to allow telephone cable to be buried longitudinally along the road shoulder has increased very significantly. In general, however, the requirements for permitting utilities to utilize highway rights of way are the same as for utility relocation work as explained above.

LIST OF COMPANIES HAVING SIGNED COMPREHENSIVE AGREEMENTS

1.	Virginia Electric and Power Company, Richmond, Virginia	1/ 1/1952
2.	Peoples Mutual Telephone Company, Gretna, Virginia	12/12/1952
3.	Farmers Mutual Telephone System of Shenandoah County, Edinburg, Virginia	11/30/1954
4.	General Telephone Company of the Southeast, Bluefield, West Virginia	6/ 6/1956
5.	Chesapeake and Potomac Telephone Company, Richmond, Virginia	6/18/1956
6.	Tidewater Telephone Company, Warsaw, Virginia	7/18/1956

7. Home Telephone and Telegraph Company of Virginia, Tarboro, North Carolina 7/30/1956
8. Inter-Mountain Telephone Company, Bristol, Tennessee 8/31/1956
9. Powell Valley Electric Cooperative, Jonesville, Virginia 10/30/1956
10. Home Telephone Company, Smithfield, Virginia 11/ 6/1956
11. Fredericksburg and Wilderness Telephone Company, Inc. Chancellor, Virginia 1/31/1957
12. Accomack-Northampton Electric Cooperative, Parksley, Virginia 3/18/1957
13. Virginia Telephone and Telegraph Company, Charlottesville, Virginia 8/20/1957
14. Harrisonburg Telephone Company, Harrisonburg, Virginia 8/21/1957
15. Piedmont Telephone Company, Manassas, Virginia 11/13/1957
16. American Telephone and Telegraph Company of Virginia, Washington, D. C. 1/27/1958
17. Lee Telephone Company, Martinsville, Virginia 5/ 6/1958
18. Appalachian Power Company, Roanoke, Virginia 6/17/1958
19. Southern Telephone Company, Charlottesville, Virginia 10/ 7/1959
20. Harrisonburg Electric Commission, Harrisonburg, Virginia 4/ 3/1961
21. Eastern Shore Public Service Company of Virginia, Salisbury, Maryland 1/ 7/1963
22. Northern Piedmont Electric Cooperative, Culpeper, Virginia 4/23/1965
23. First Colony Telephone Company, St. Marys, West Virginia 2/27/1967

REASSESSMENT TO REFLECT RESULT OF EASEMENTS

A thorough investigation was made of the entire tax structure as it relates to the public service companies, as well as to the individual landowner, to determine their application and impact on the respective parties as well as their effect upon the acquisition of easements and the extension or refinement of public utility services. Careful consideration was given to all aspects of public utility taxation. An analysis of the procedures therefor is included in Appendix I.

In 1945 the Virginia Advisory Legislative Council recommended to the General Assembly that general reassessments of locally taxable real estate be made compulsory in all of Virginia's counties, and periodic general reassessments of locally taxable real estate in cities be continued. The 1946 Session of the General Assembly passed legislation restoring compulsory general reassessments in counties and fixed the frequency of reassessments at every eighth year.

The Commission on State and Local Revenues and Expenditures, in 1949 recommended changing the frequency of reassessment; consequently, the General Assembly in 1950 passed legislation which required that a general reassessment of real estate be made in all of Virginia's cities during the year 1950, and every fourth year thereafter. The statutes also were amended to require that there be a general reassessment made in each of our counties no later than the sixth year after the year in which the last one was made.

In 1946 the Department of Taxation, upon the request of the governing body of any county or city, was required to render advisory aid and assistance in making any general reassessment of real estate in such county or city. In 1956 the word town was also included in this regard.

Locally assessable real estate includes all real property other than those items specifically exempted by Section 183 of the Constitution of

Virginia and certain additional items added and carried within the framework of § 58-12 of the Code of Virginia as amended. Real property assessable under law by the State Corporation Commission was also excluded from the provisions for general reassessment by the local assessing officer or officers.

With regard to public service easements, the problem confronting the local assessing officials falls within two general classifications. The first—those encountered by the commissioner of the revenue in the performance of his annual assessment duties and secondly, those facing the real estate assessors making a periodic general reassessment of real property.

The State Tax Department historically advised the commissioners that an easement constitutes solely a right to the use of property and should in no way be construed as a transfer of real estate in itself. Statutes have not been adopted granting him the right between periodic general reassessments to reappraise or reassess land areas where the owner has granted another the right to the use of all or a portion of his land for a specific use. Very little can be added in this regard except to say that this question arises periodically and most of Virginia's interim assessors are surprised to learn that they are powerless to act.

The duties of the real estate assessor at the time of general reassessment, however, are vastly different from those recited above. Clearly it is his, or their responsibility, to study all of the factors pertinent to their work, and it goes without saying that the presence of such a public service easement would have its impact on the value of real estate. In some instances it would obviously have a depressing influence on market value, and in others it would clearly add to the market value.

Virginia's assessors have generally taken the position that the main line of a railroad, a gas or oil transmission line, high tension power lines, etc. do not ordinarily add to but rather have a detrimental impact on real estate values. We repeatedly hear the observation made that of two similar places, one without the easement in force and one with it, clearly the real estate not subject to the easement would be more desirable to own than the one with it. The extent of the assessors' estimate of difference in value can easily be determined through an examination of the field work sheet. In areas where land is generally "open" and used for either row crop farming or grazing, the assessors instruct the appraisers to use the lower end of the bracket assigned for land of this particular type. An illustration would be in the Type I—Tillable Lands Class A—Highly Productive—Well Situated—$200 to $250 per acre. The $200 increment would be used where the easement exists, and $250 where it does not exist.

In the case of wooded areas, appraisers are usually instructed to reduce the appraised value to the rate per acre assigned to the classification—"cut-over." Actually, the impact of the easement is much more acute in this area than in areas where open land farming is conducted. More has not been done here because unit land values in the past have been low. But with the pronounced change in selling prices of rural wooded real estate within the past decade, the presence of public service easements has become an item of material moment to the landowner whose real estate is best suited to the raising of trees; and in this regard the public service easement stipulates that such shall not be done. Obviously the real estate assessors in subsequent general reassessments must give this matter more study than they have in the past.

In localities possessing up-to-date real property identification maps with public service easements shown, the problem is not difficult to resolve.

In the absence of real property maps, aerial photography has been used effectively to determine the approximate areas subject to such easements. Time would not permit extensive research into the court records to read the easements themselves. Where neither of the aforementioned items are available, or when the public service easements are not shown on the map, nothing has been done except in those instances where a real estate owner has called the matter to the attention of the assessors during periods of review, and in addition has supplied them with sufficient data for their use. The Mapping Section of the Division of Real Estate Appraisal and Mapping of the Virginia Department of Taxation endeavors to show the railroad rights-of-way, main gas and oil transmission lines, and the main transmission lines of the electric companies. No effort is made by the Department to locate on county or city maps the distribution lines.

Public service easements falling within the "main line or transmission" categories have had a serious impact on urban real estate values. Where these easements bisect areas, the land subject to the easement can no longer be used to the highest degree possible; consequently, the real estate assessor depresses his estimate of market value for these areas from the rates assigned per front foot or per square foot on the land areas adjacent but not subject to the easement itself. Residential rates are not used but rather the level of agricultural values has usually been applied.

While these "main line" public service easements usually depress the value of the land areas subject to easement, the "distribution easements operate usually in the opposite direction." The presence of this type of public service easement and the ensuing improvement or development for the purpose intended by such easement has materially added to raw or basic land values.

Section 58-772.1 was substantially enlarged in 1954 from which we quote:

> "The commissioner of the revenue shall assess or reassess, as required, any lot, tract, piece or parcel of land upon or to which improvements have been made, such as the hard surfacing of streets or roadways, installation of curbs, gutters, sidewalks, and utilities, any one or all which may add to the fair market value, which assessment shall be made with regard to other assessments of lots, tracts, pieces or parcels of land in the city or county."

In order to retain the highest degree of uniformity in real estate assessed values, this statute requires action on the part of the commissioner of the revenue when these physical changes have occurred. Invariably the assessed values are increased and in most instances rather substantially higher than past assessments made prior to these changes.

In summary, the real estate assessor has followed the policy of reducing the assessed value per acre or appraised value per acre, and does not specifically show on his work sheet that so many acres have been made subject to such an easement and the commissioner of the revenue acts solely with regard to distribution facilities and is powerless to act with respect to main or transmission-type easements.

It can be seen from the foregoing that as to the small landowner there is no automatic tax relief when his land has been reduced in value by the acquisition of an easement by a public service company. He must be alert to call this to the attention of the assessor during periodic reassessments. The commissioner is powerless to act in the interim. As we have noted, the commissioner is required to reassess land on which improvements have

been made during the interim. Thus, if his land value is increased by improvements it is immediately reassessed and taxes imposed at the higher value. If, on the other hand, the value of a parcel of land has been decreased by the acquisition of an easement by a public service company, the commissioner is powerless to act during the interim between general reassessments. This we believe to be a patent injustice. To remedy this situation we have recommended that the commissioner be required, at the motion of the landowner whose land has been subjected to an easement by a public service company, to reassess as necessary between normal reassessments so as to reflect the change in value caused by such easements. If the commissioner fails or refuses to make such reassessments, recourse to the courts should be provided to the landowner. A bill effectuating this recommendation is appended hereto (see Appendix II).

While our attention has been directed primarily to the effects of public service easements, our recommendation and proposed legislation is sufficiently broad as to allow a deduction where an easement is conveyed to the Highway Department or local authorities for street or highway purposes.

CONCLUSION

The Council expresses to those who served on the Committee its deep appreciation for their contribution to the completion of this study. It further wishes to thank the State agencies and the personnel of the utility companies without whose aid the information contained in this report could not have been assembled.

Respectfully submitted,

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APPENDIX I

The laws of Virginia governing the assessment of the property of public service corporations for tax purposes are administered by the State Corporation Commission which is a constitutional agency of the State having legislative, judicial and administrative powers. In addition to assessing the property of these corporations, the Commission administers the laws regulating public service corporations as to rates, services and financial structure. Since these functions are administered by the same State agency the Public Utilities Taxation Division, in addition to its staff, has available and makes use of information developed by other divisions of the Commission in connection with rate making and security issues of public utilities.

We have in Virginia a dual system of taxation of public service corporations. The law requires that the franchises of such companies be assessed and taxed for State purposes and that their real and tangible personal property (except the rolling stock of public service corporations) be assessed at its "bare bones" value (without including going concern value) for local taxation. We are further required to assess on the inventory method and at the situs.

The methods for determining the value of a public utility are somewhat different from locally assessed property because utility property is, by nature, economically different from ordinary property. Public utilities are regulated by State Commissions as to rates, assurance of good service and as to the buying or selling of utility properties. All of these regulations, of course, are not found in competitive business or properties. Public utilities have contended they should be allowed a "fair return" on replacement or reproduction cost new basis. The State Public Service Commissions and Federal Commissions have rejected this argument.

Public utilities are rarely sold, and when sold in Virginia the same original costs by accounts are entered on the acquiring company's books. The property of a public utility is used to make money and the maximum value of income producing property that cannot be sold (such as a power plant or telephone line) depends on how much income the property can produce. The State Corporation Commission regulates the income the property of a public utility can produce and, generally speaking, the Commission permits a utility to earn about 6% of the original cost less depreciation of its property. This means that the property cannot be worth more than original cost less depreciation, and represents the maximum value of the property to its owners, the stockholders, or to the purchaser of a public service corporation. The Virginia Commission, for reasons set forth above, assesses public utilities on depreciated original cost.

About January 1st of each year each public service corporation is furnished with forms prescribed by the Commission on which it is required to make, before April 15th, its return of its property located in the State as of the first day of January. The assessments, when made, are entered on the original return opposite the items of property and then copied on the duplicate copy which is returned to the company about September 1st, when the property assessments have been made by orders of the Commission.

The reporting forms have been designed for the distribution of property, showing particularly in what city, town or county and school district the property is located. These forms are designed so that all property of the utility may be returned by classes as prescribed by the appropriate section of the Code.

The classes of property required by Statute to be reported separately for electric utilities, as an example, are, as follows: (A) Land and Improvements, (B) Generating and Substation Equipment, (C) Transmission and Distribution Lines, (D) Underground Conduits, Conductors and Devices, (E) Line Transformers, (F) Services, (G) Meters, (H) Street Lighting and Signal Systems, (I) General Equipment, (J) Material and Supplies, (K) Merchants Capital, (L) All other property not enumerated in any of the foregoing heads and whether used in public service operations or otherwise.

The above classes of property are not intended to classify property as to real or personal, but to show the character of property so it can be identified by description to separate the items of property.

In addition to being designed to comply with the Statutes, the forms have been designed to conform to the plant accounts set forth in the Uniform System of Accounts for the various utilities which was adopted by the National Association of Railroad and Utilities Commissioners in 1936 and prescribed by orders of our Commission in 1937. This permits a ready comparison between values returned for assessment purposes and the amounts carried at original cost of the various classes of property on the books of the company and reported in the Annual Operating Reports filed with the Commission each year and similar to the reports filed with the Federal Government.

The usual procedure is making an appraisal of electric or other public service corporations' property is; first, to make a physical inventory of the property and a depreciation study. The undepreciated value is then determined upon the basis selected and, finally the depreciated value. Virginia using original cost as its basis, we are fortunate in several ways in respect to the above brief outline of an appraisal in that when the Commission required the accounts of utilities to be set up on original cost in accordance with the Uniform System of Accounts, the utilities made a physical inventory of their property and, in cooperation with our Public Utilities Taxation Division, set the inventory up by taxing districts. The major utilities keep continuous property records by taxing districts. The continuous property records, through additions and retirements each year, both as to quantities and costs, provide a perpetual inventory. The work orders issued by the utility show the tax district in which the work is done and these work orders are the means of keeping the continuous property records up to date.

The components of construction cost considered for tax purposes are, as follows: contract work, labor, material and supplies, transportation, special machine and shop service, protections, injuries and damages, privileges and permits, rents, engineering and supervision, general administration, preliminary engineering, insurance, law expenditures, taxes, interest during construction and all other expenses and overheads in connection with the addition of plant to the utility. The Commission, upon the adoption of the Uniform System of Accounts, proceeded to make original cost studies; and made them in cooperation with the Federal Government when the utility operated interstate. The Accounting Division of our Commission makes periodical examinations of the utilities' books in connection with rate cases and makes adjustments, where necessary, for property classification and original cost.

In determining the fair market value of utility property, depreciation is a very important factor. The Staff of the Commission finds it necessary to disregard the book reserves for depreciation or amortization and to compute its own allowable depreciation for various classes of property.

The depreciation allowed by the Commission for tax assessments may be higher or lower than the depreciation reserve carried on the taxpayer's books. It has often been found that items of property which have been completely depreciated and retired from the books were still in operation. All property is, of course, subject to taxation.

The same depreciation used by the Commission for rate making purposes is, therefore, not necessarily used for purposes of taxation. The difference between the depreciated value for tax purposes and the original cost, including expenses and overheads heretofore set forth, is accounted for by observed depreciation, inadequacy, obsolescence and other factors having a bearing on the operation of the utility in keeping with the Commission's estimate of current condition of each individual class of property owned by each taxpayer.

Our depreciation studies are of two kinds: one, where the depreciation is determined on individual major items of property such as structures and generating equipment; the other group, where the depreciation is determined as an average figure applied to classes of property such as pole lines, open wire lines, transformers and meters. The depreciation studies consist of studies of records of the company with use of various depreciation methods and inspection of the physical property. The major public service properties are generally maintained in more or less stable physical condition and adjustments for loss of value of well established plants are infrequent except in those cases in which there are major additions of new property or major retirements of old property. We find from studies and experience that the value after depreciation of mass items of property such as pole lines, wire lines, meters and transformers of major utilities will run about 80% of original cost and the average age of most items of property will be approximately ten years.

The procedure as outlined in arriving at the fair market value is true of all classes of property with the exception of land. In determining the value of land, direct comparisons are made with lands locally appraised. Land and improvements or other property owned by a public utility and not being used or held for utility use, is assessed on the same basis as if assessed by the local assessing authority. As an example of this type of property, a railroad company may own a parcel of land on which is located a railroad station building no longer used to provide railroad service but leased for storage or the building may be a warehouse that is leased out. In these cases, we have the local assessing officer to visit the site with us and to furnish the value he would place on the land and improvements as though being assessed locally and on the local ratio. The values furnished are the assessed values used on this type of property and not affected by Section 58-512.1 of the Code of Virginia.

With the information outlined above and such other information as may be available from any reliable source, the Commission determines the fair market value of the real and tangible property of the utilities each year.

The law of Virginia requires the local taxing units to tax property assessed by the State Corporation Commission at the same rate as other property in the taxing district. The local units do not assess the other property at its full value but at widely varying fractions of its full value. To achieve a fair measure of equalization, the State Corporation Commission, as the final step in the tax assessment procedure has heretofore equalized the value ascertained by it at 40% of the fair market value.

The 1966 session of the General Assembly enacted Section 58-512.1, of the Code of Virginia which prescribes the procedure for reverting from the use of 40% statewide ratio on public utilities to the local ratio of each taxing district over a twenty year period commencing January 1, 1967. The Act provides that any increase in the assessed valuation of any public service corporation property in any taxing district over the assessed value as of January 1, 1966 shall be made by the application of the local assessment ratio prevailing in such taxing district for other real estate as determined by the most recently published findings of the Department of Taxation. The Act also provided that in addition to the above, the January 1, 1966 assessed valuation being used as a base, one-twentieth of the base figure would be transferred from 40% statewide ratio to the prevailing local ratio each year. The above procedures carried out will result in all public service property being on local ratio at the end of twenty years. Public utilities that are local in operation, such as gas and water companies, local ratios are used instead of the 40%, therefore, will not be affected by Section 58-512.1.

The Code of Virginia was amended by Senate Bill No. 256 which adds a new section numbered 58-514.2. Section 58-514.2 provides the procedure for local taxing officials to gradually apply their real estate tax rate to the assessed value of utility property that has formerly been taxed as tangible personal property. The above new section makes an exception to the above which provides that all automobiles and trucks of public service corporations shall be taxed at the same rate or rates applicable to other automobiles and trucks in the respective locality.

The Commission in their Printed Assessment which certifies the assessed values to the localities, provides an extra column which separates automobiles and trucks from other classes of property.

When the returns are received in its office, on or before April 15th of each year, they are first checked with the report of the prior year to see that all information requested has been furnished and to see that the property is properly distributed to the various taxing districts. The reporting forms are next checked for mathematical calculations and then compared with the Annual Operating Reports by total of accounts to determine if the additions and retirements have been reflected in the Tax Report and by comparison of the report with that of the prior year. The above having been completed, the next step is the application of depreciation factors previously discussed to the various classes of property. The depreciation studies and other matters pertaining to the property are carried on between assessing periods since the period of time between the filing date and the assessment date is limited.

The final assessed values are certified in printed book form to the localities about September 1st of each year and the local tax authorities classify the various classes of property as to real and personal and extend the local tax levy on these values.

The tentative assessed value, after application of the ratios to the fair market value for local taxation of property for all public service corporations operating in Virginia and assessed by the State Corporation Commission, is $1,078,108,607 for the year 1967. The figure for 1966 was $1,033,821,556.

The State Corporation Commission, in addition to these assessments for local taxation, assessed the same utilities for 1967 a total of $28,740,011.99 in State Franchise Taxes, based on a percentage of gross receipts, plus the State Taxes on intangible personal property.

APPENDIX II

A BILL to amend and reenact §§ 58-763 and 58-764 of the Code of Virginia relating to adjustments in the assessed value of real estate.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58-763 and 58-764 of the Code of Virginia be amended and reenacted as follows:

§ 58-763. How assessed value changed; improvements; correction by court or board of equalization.—The value of real estate as ascertained at a general reassessment and the ascertained value of the new grants which may hereafter be entered and assessed shall only be changed to allow the addition of the value of improvements, or a total or partial deduction of the value of such improvements *or an addition to or total or partial deduction from the value of any easement affecting the real estate,* except so far as the same are directed to be corrected by a court of competent jurisdiction or by the local board of equalization in the exercise of powers expressly conferred by law.

§ 58-764. Change when no general reassessment in county in past four years.—In any county in which a general reassessment of real estate has not been made for a period of four years, any owner of real estate therein who is of opinion that the assessed value of the real estate is greater than its fair market value may apply for relief to the circuit court of the county. *In the case of any real estate upon which any easement has been acquired for the installation of public service, highway or street facilities, and which has not been reassessed by the Commissioner of the Revenue on request of the landowner as provided in the preceding section, the owner thereof may apply for relief to the circuit court of such county or any city court of record wherein such property is located.* If the governing body of any county is of the opinion that any real estate therein is assessed at less than its fair market value, it shall direct the Commonwealth's Attorney to apply to the circuit court of such county to have the assessment corrected. Proceedings upon any such application shall be as provided in §§ 58-1145 to 58-1151 and the court shall enter such order with respect to the assessment as is just and proper.