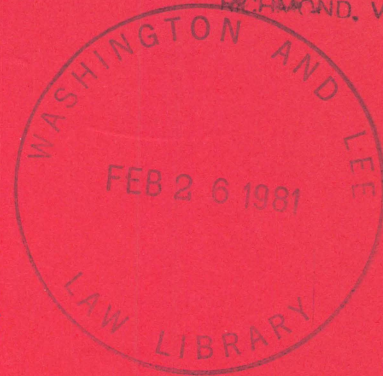
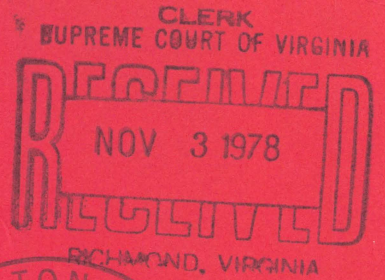


220VA997



IN THE  
SUPREME COURT OF VIRGINIA  
AT RICHMOND

---

Record No. 780-738

---

VIRGINIA ELECTRIC AND POWER COMPANY,  
Appellant,

v.

DR. ROBERT LADO, ET AL  
Appellee.

---

APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT OF WARREN COUNTY.

VIRGINIA ELECTRIC AND POWER COMPANY,  
a Virginia corporation,

Petitioner,

v.

DR. ROBERT LADO, ET AL, and  
17.88 Acres, More or Less, of  
Land, Located in Warren County,  
Virginia,

Defendants.

PETITION FOR  
CONDEMNATION

LAW NO. \_\_\_\_\_

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF WARREN COUNTY,  
VIRGINIA:

Your Petitioner, Virginia Electric and Power Company  
(the Company), a public service corporation organized and doing  
business under the laws of the Commonwealth of Virginia, respect-  
fully represents:

(1) That it is a public service corporation engaged in  
the manufacture, distribution and sale of electricity to the public  
of the Commonwealth and, as such, is authorized by Title 56;  
Chapter 2 and Title 25, Chapter 1.1 of the Code of Virginia, 1950,  
as amended, and the laws of the Commonwealth to acquire by the  
exercise of eminent domain any lands or estates or interests  
therein, rights of way, easements or other interests in lands, for  
its use in serving the public.

(2) That the work or improvements to be made by the Company, as described herein, are necessary to meet the increasing demands for electricity throughout the entire system of the Company, particularly in Northern Virginia.

(3) That the public uses for which the perpetual rights, privileges and easement of right of way described herein are to be acquired are the construction, operation and maintenance of the Company's Mount Storm-Morrisville Transmission Line extending a distance of 46 miles, more or less, from a point in the Frederick County, Warren County, Virginia line, eastwardly through Warren, Rappahannock, Fauquier and Culpeper Counties, Virginia, to the proposed Morrisville Substation in Fauquier County, Virginia, in order to furnish electric service to the public.

(4) That a description of the work or improvements to be made upon the easement of right of way described herein is the construction, operation and maintenance of one or more lines of poles, towers or structures, together with all wires, attachments, equipment, accessories and appurtenances desirable in connection therewith (the facilities), for the purpose of transmitting or distributing electric power. The said perpetual right, privilege and easement of right of way extends over, upon and across certain lands and property situated in Warren County, Virginia, herein sought to be condemned. A plat disclosing the nature of such work or improvements, including the maximum dimensions of typical poles, towers and structures, is attached hereto as an exhibit.

There are no cuts, fills, trestles or bridges to be made in connection with the use by the Company of the easement at any time and the contour of the land will remain as at present with the exception of planting the poles, towers and structures.

(5) That as to the property to be taken or damaged, the names and residences of the defendants who are joined as owners thereof, or of some interest therein (the Owners), are the following:

PARCEL NO. 35: Dr. Robert Lado and Lucia A. Lado, his wife,  
5404 Newington Road, Bethesda, Maryland 20014; W. LeRoy  
Corron, Trustee, 15 Massie Street, Front Royal, Virginia  
22630.

(6) That the estate, interest or rights sought to be acquired are the perpetual right, privilege and easement of right of way, as hereinabove and hereinafter more particularly described, over, upon and across the lands described herein situated in Warren County, Virginia.

The facilities installed on said easement of right of way shall remain the property of the Company. The Company shall have the right to inspect, rebuild, remove, repair, improve, relocate such facilities on such right of way, and make such changes, alterations, substitutions, additions to or extensions of its facilities as the Company may from time to time deem advisable. The facilities shall be constructed in accordance with national safety codes in effect at the time of construction.

The Company shall at all times have the right to keep the right of way clear of all buildings or structures (except fences), trees, stumps, roots and undergrowth, and shall have the further right to trim or fell any tree outside the right of way which, in the opinion of the Company, constitutes a hazard to, or may endanger the safe or proper operation of its facilities. Such a tree shall be any tree which in falling or being felled could come within ten feet of any conductor. All trees, limbs and undergrowth cut or felled by the Company and all stumps and roots uprooted by the Company may be disposed of by the Company within six months after they are cut, felled or uprooted. If the Company elects not to dispose of any or all of such trees, limbs, stumps, roots and undergrowth cut or uprooted on the right of way, such trees, limbs, stumps, roots and undergrowth shall be placed by Company in piles on the right of way where they will not block streams or drainage ditches. If the Company elects not to dispose of any or all of the trees and limbs cut, felled or which fall outside the right of way, the Company will in general leave them where they are felled or fall, with the trees limbed, and so as not to block streams and drainage ditches. All trees, limbs, stumps, roots and undergrowth cut and uprooted by the Company and not disposed of by the Company within six months after they are cut or uprooted shall be and remain the property of the Owners. All trees felled by the Company outside the right of way six months or more after the Company completes

the initial construction of facilities on the right of way shall be paid for at their then local market value.

The Company shall have the further right, but not the obligation, to plant selective trees and shrubs within the right of way at public road crossings in wooded areas.

For the purpose of constructing, inspecting, maintaining or operating its facilities, the Company shall have the right of ingress to and egress from the right of way over such private roads as may now or hereafter exist on the property of Owners. Any damages resulting to such private roads from such use shall be repaired by the Company at its expense. The right, however, is reserved to Owners or their assigns to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the right of way, the Company shall have such right of ingress and egress over the property of Owners adjacent to the right of way and lying between public or private roads and the right of way, which right is to be exercised in such manner as shall occasion the least practicable damage and inconvenience to Owners. The Company shall be liable for all damages resulting from its exercise of the right of ingress and egress.

The Company shall repair damage to fences or other improvements and shall pay the Owners for any damage to crops, either inside or outside the right of way, when such damage results from the construction, inspection or maintenance of the Company's facilities, provided the Owners give written notice thereof to the Company within thirty days after such damage occurs.

The Owners, their successors and assigns, may use the right of way for any purpose not inconsistent with the rights herein sought to be condemned including, but not limited to, the right to construct, operate and maintain passways, roads, streets, railroad tracks, ditches, water, sewer, telephone, electric or other utility lines across the right of way, in such manner that the angle between the center line thereof and the center line of the right of way shall be not less than forty-five degrees, provided that such use does not interfere with or endanger the construction, operation or maintenance of the Company's facilities; that no buildings or other structures may be constructed on the right of way except as herein provided; and that the Owners shall not excavate or place fill material on said right of way or place or lay septic tanks or drain fields on said right of way, without the prior written consent of the Company. The Company shall at all times have the paramount right to cross or cut through such passways, roads, streets, railroad tracks, water, sewer, telephone, electric or other utility lines and to interrupt the use thereof, for the purpose of constructing, maintaining, operating, repairing, altering or replacing its facilities, provided, however, that any damage done by the Company in the exercise of such paramount right shall be repaired at the Company's own cost and expense.

Two types of structures may be erected on said right of way, namely, single poles or multiple poles with or without cross-arms and metal towers. The individual poles will not exceed a



height of 150 feet. Metal towers will not exceed a height of 150 feet, and the measurement of the base of the metal towers will not exceed 50 feet square. In no case will clearances of conductors be less than that specified for the voltages concerned by the national safety codes in effect at the time of construction. No buildings or substations will be erected on the right of way herein sought to be condemned. Low voltage transformers may, however, be mounted on poles.

(7) That the easement sought to be acquired over, upon and across the lands of Owners, the location and bounds thereof, and the quantity of land included within said easement is shown by plat of survey of the said easement of right of way attached hereto as an exhibit.

The easement of right of way 150 feet in width over the parcel of land designated Parcel No. 35 is described by reference to a survey line which is shown on the plat attached hereto and is described as follows:

PARCEL NO. 35: (Dr. Robert Lado, et al)

Beginning at Station 554 plus 16.1 in the property line dividing property of Owner and that of William Vincent Robinson, which point is N. 19° 02' W. 188.0 feet along said property line from a property corner, marked by an iron pipe; thence S. 47° 10' E. 5,244.4 feet to Station 606 plus 40.5 in the property line dividing property of Owner and that of High Knob, Incorporated, which point is S. 82° 19' W. 17.5 feet along said property line from a property corner, marked by an iron pipe. It being the intention of Company to condemn, by the foregoing description, an easement over all property of Owner lying within the outer boundaries of a right of way 150 feet in width, as shown on said attached plat.

Being a portion of the same real estate conveyed to Robert Lado and Lucia A. Lado, his wife, as tenants by the entirety with right of survivorship as at common law, by deed from Anthony A. Haymie and Hazel S. Haymie, his wife, dated March 30, 1973, recorded in Deed Book 200, page 40, in the Clerk's Office of the Circuit Court of Warren County, Virginia.

(8) That there has been compliance with the provisions of Section 25-46.5 of the Code of Virginia, 1950, as amended, in that the Company, through its officers and agents, has made bona fide but ineffectual efforts to acquire the said easement of right of way by purchase from Owners, but said efforts have failed because Company and Owners have been unable to agree upon the price of the same.

(9) That the award of the commissioners is to be in full and total payment for the right of way; for all trees, undergrowth and other obstructions within the right of way; for all trees outside of the right of way trimmed or felled during the initial construction of the Company's facilities and within six months thereafter, for all other rights and privileges hereinabove set forth, and for any damages to the residue of the Owners land.

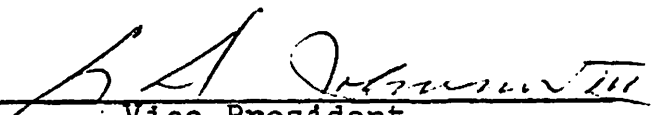
(10) That authority has been obtained from the Company's Board of Directors for the acquisition of the rights, privileges and easement of right of way herein described.

WHEREFORE, your Petitioner prays for judgment that the estates, interests, or rights hereinabove described be condemned and that the titles thereto be vested in your Petitioner; that just

compensation for such right of way to be taken and the damages, if any, to any other property, as a result of the taking and use by your Petitioner, beyond the peculiar benefits, if any, by reason of such taking and use by your Petitioner, be ascertained and awarded; that distribution of such awards be made by the Court in the manner prescribed by law.

VIRGINIA ELECTRIC AND POWER COMPANY

By

  
Vice President

J. Sloan Kuykendall, Esquire  
Kuykendall, Hall & Whiting  
200 South Cameron Street  
Winchester, Virginia 22601

Joseph M. Spivey, III, Esquire  
Hunton & Williams  
707 East Main Street  
Richmond, Virginia 23212

Counsel

COMMONWEALTH OF VIRGINIA )  
 ) To-wit:  
CITY OF RICHMOND )

This day L. D. Johnson, III personally  
appeared before me, Betty S. Mauck, a Notary Public  
in and for the City of Richmond, Commonwealth of Virginia, in my  
City aforesaid, and being first duly sworn, says that he is a Vice  
President of Virginia Electric and Power Company, and as such is  
duly authorized to execute the above Petition, and that the matters  
and things stated therein are true to the best of his knowledge and  
belief.

Given under my hand this 30th day of November,  
1926.

My commission expires June 23, 1929.

Betty S. Mauck  
Notary Public

V I R G I N I A :

IN THE CIRCUIT COURT OF WARREN COUNTY

VIRGINIA ELECTRIC AND POWER COMPANY,  
a Virginia Corporation

Petitioner

v.

AT LAW NO. 4393

DOCTOR ROBERT LADO, et al, and  
17.88 Acres, More or Less, of  
Land, Located in Warren County,  
Virginia,

Defendants

VESTING ORDER

This case came to be heard on the 3rd day of January, 1978 on Petitioner's Exceptions to the Report of the Condemnation Commissioners and Motion for a new trial. A written Memorandum in support of its Exceptions and Motion for a new trial was filed by counsel for the Petitioner prior to the hearing, and argument was heard from both counsel for the Petitioner and the Defendants.

Upon consideration whereof, it appears to the Court that:

1. The Report of the condemnation Commissioners filed in this action of October 28, 1977, wherein the following award was made should be confirmed:

<u>Value of Property To Be Taken</u>	<u>Damages, If Any, To Any Other Property</u>	<u>Total Award Of Just Compensation</u>
\$17,880.00	\$114,000.00	\$131,880.00



2. The Petitioner's Exceptions to the Report of the Condemnation Commissioners and Motion for a new trial are without merit.

3. All parties having an interest in the funds to be paid into Court for the benefit of the owners are before the Court or have expressly consented to the distribution herein ordered.

It is, therefore ADJUDGED and ORDERED that:

1. That the aforesaid Report of Condemnation Commissioners is hereby confirmed and approved, to which ruling of the Court, counsel for Petitioner duly objected and excepted.

2. The Exceptions filed by the Petitioner numbered one through six are hereby overruled and Petitioner's Motion for a new trial is denied, to which ruling of the Court, counsel for Petitioner duly objected and excepted.

3. The title to the rights, privileges and easements in and to the property, all of which are more particularly described in the Petition for Condemnation, and Exhibits attached thereto, filed herein shall vest in the Virginia Electric and Power Company upon payment of the Award in one of the modes prescribed in paragraph 7 of this Order.

4. The Clerk of this Court make, certify and record in the current Deed Book in his Office, pursuant to Section 25-46.27 of the Code of Virginia, 1950, as amended,

a copy of the Petition for Condemnation, the Exhibits attached thereto, and a copy of this Order, and duly indexed the same in the name of the Virginia Electric and Power Company, as Grantee, and names of the owners, whose lands are affected by this proceeding as shown in the aforesaid Report, as the Grantors. The Clerk of this Court will also release the lis pendens affecting the lands described in the proceeding.

5. The costs herein, including Twenty Dollars (\$20.00) plus fifteen cents (15¢) per mile to each of the Commissioners, appointed herein, to wit: Walter H. Carter, Smith Baldwin, Lynwood Morrison, H. E. Morrison, and Maurice Bowen and the sum of Ten Dollars (\$10.00) plus fifteen cents (.15) per mile to Robert M. Biggs, Jr., Reginald Stickley, and James Fox, who were summoned and appeared but did not serve herein, shall be paid by Virginia Electric and Power Company, and the same shall be charged and taxed by the Clerk as a part of the costs of this proceeding as provided by law.

6. It appearing that there are no tax or other liens against the real estate, except the following:

(a) Deed of Trust: Lado's to W. Leroy Corron, Trustee, dated March 30, 1973, recorded in Warren County in Deed Book 200, Page 42, to secure Two Hundred Thousand Dollars (\$200,000.00) and interest payable to order of Anthony A.

Haymie and that Anthony A. Haymie consents to the payment of the entire award to Robert Lado and Lucia A. Lado, and that the entire award may, therefore, be properly paid to the owners, the Court therefore directs that the Clerk pay unto Robert Lado and Lucia A. Lado from the funds to the credit of the Court in this cause.

7. Petitioner shall pay in the award in the following manner:

(a) Thirty-Six Thousand Dollars (\$36,000.00) to be deposited with the Court.

(b) Balance of the award, Ninety-Five Thousand, Eight Hundred Eighty Dollars (\$95,880.00) shall be deposited with the Court or, at the election of the Petitioner, a bond with corporate surety may be given for this amount. In the event such bond is given in lieu of deposit and this case is not appealed to the Supreme Court of Virginia or, if appealed, the Petition for Appeal is denied or the decision affirmed, the balance with interest shall then be deposited with the Court to be paid to the owners as herein directed. In the event this case is appealed to the Supreme Court of Virginia and reversed the obligations created under said bond shall terminate.

8. The transcript of the evidence heard at the trial of this case on October 28, 1977, together with all the incidents of the trial are hereby made a part of the record in this case for the purpose of appeal to the Supreme Court of Virginia, or

otherwise.

Entered this 7 day of

March, 1970.

William C. Eide

JUDGE

SEEN:

[Signature]

Counsel for Petitioner

[Signature]

Counsel for Defendants

Anthony A. Haynie

Anthony A. Haynie

W. Leroy Corron, Trustee

W. Leroy Corron, Trustee

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF WARREN

VIRGINIA ELECTRIC AND POWER COMPANY, )  
a Virginia corporation, )

Petitioner, )

v. )

REPORT OF  
CONDEMNATION COMMISSIONERS

DR. ROBERT LADO, ET AL., and )  
17.88 Acres, More or Less, of )  
Land, Located in Warren County, )  
Virginia, )

LAW NO. 4393

Defendants. )

TO THE HONORABLE JUDGE G. b b  
OF THE CIRCUIT COURT OF WARREN COUNTY, VIRGINIA:

We, the undersigned, were summoned, appointed and sworn on the 28th day of October, 1977, to fix the value to be paid to the defendant Owners for the perpetual rights, privileges and easement proposed to be taken by said Virginia Electric and Power Company and to fix the damages, if any, to any other property of the said Owners, beyond the peculiar benefits, if any, to such other property by reason of the taking and use thereof by the Petitioner, which rights, privileges and easement of right of way are more particularly described in the Petition for Condemnation



filed herein and the exhibit attached thereto, over, upon and across the land of Owners situated in Warren County, Virginia.

Upon the completion of our view of the location of said line with the rights, privileges and easement aforesaid, and after hearing the testimony in open court and in accordance with the Court's instructions, we have concluded and hereby report that the value of all the rights, privileges and easement as described in the Petition in and to the property therein described, and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property by reason of such taking and use by the Petitioner, are:

<u>Value of Property to be taken</u>	<u>Damages, if any, beyond the en- hancement, if any, to any other property</u>	<u>Total Award of just compensation</u>
\$17,880. <sup>00</sup>	\$114,000. <sup>00</sup>	\$131,880. <sup>00</sup>

PARCEL NO. 35: Dr. Robert Lado and Lucia A. Lado, his wife, 5404 Newington Road, Bethesda, Maryland 20014; W. LeRoy Corron, Trustee, 15 Massie Street, Front Royal, Virginia 22630.

The foregoing total award includes full and total payment for the right of way; for all trees, undergrowth and other obstructions within the right of way; for all trees outside of and on either side of the right of way trimmed and felled during the initial cutting of trees outside of the right of way; for all trees trimmed or felled within three years after the initial cutting of trees outside of the right of way on that side; for all other rights and privileges hereinabove set forth; and for any damages to the residue of the Owners' land.

Given under our hands this 28th day of October,  
1911.

Respectfully submitted,

W. E. Morrison

Walter H. Carter

J. S. Baldwin

\_\_\_\_\_

\_\_\_\_\_  
Commissioners

COMMONWEALTH OF VIRGINIA)

) To-wit:

COUNTY OF WARREN )

I, Edward M. Mathews Clerk of the Circuit

Court of Warren County, Virginia, do hereby certify

that H. E. Morrison, Walter H. Carter,

J. S. Ballwin, Marion Bauer, and

Samuel Morrison this day personally appeared before

me in Warren County, Virginia, and made oath before me

that they will faithfully and impartially ascertain what

will be the value of the property to be taken and the

damages, if any, to any other property beyond the peculiar

benefits, if any, to such other property by reason of such

taking and use by the Petitioner.

Given under my hand this 24th day of October,

1977.

Edward M. Mathews  
Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF WARREN

VIRGINIA ELECTRIC AND POWER COMPANY,  
a Virginia corporation,

Petitioner,

v.

DOCTOR ROBERT LADO, et al., and 17.88  
Acres, More or Less, of Land, Located  
in Warren County, Virginia,

Defendants.

AT LAW NO. 4393

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR  
BY VIRGINIA ELECTRIC AND POWER COMPANY

Virginia Electric and Power Company (Vepco) hereby gives notice of its intention to seek an appeal from the Court's Order overruling Exceptions to the Report of Condemnation Commissions and overruling Motion for a New Trial entered herein on March 2, 1978, and for its assignments of error states the following:

(1) The award for the value of the property taken and the damages, if any, to any other property are grossly excessive and unsupported by competent evidence.

(2) The award for the value of the property taken and the damages, if any, to any other property are speculative and are based upon surmise and conjecture and not upon consideration of the fair market value.

(3) The award so far exceeds the difference in the fair market value of the land affected, before and after the taking and construction of Vepco's works, as to indicate improper conduct on the part of the commissioners in that:

(a) the commissioners, or some of them, were motivated by bias and prejudice in favor of the landowner in reaching the award made in their Report; and

(b) the commissioners, or some of them, improperly based their award upon their bias or prejudice against the condemnor, because as a public service corporation, it was undertaking to acquire property rights owned by the condemnees without the consent of the condemnees.

(4) The Court erred by refusing to strike the testimony of the landowners' appraiser which (a) failed to allude to any comparable sales; (b) failed to specify how the appraiser determined the amount of damage to the remainder of the landowners' property after the acquisition; (c) relied upon the erroneous belief that the southern portion of the residue was landlocked from the remainder; (d) damaged the lake on the residue of the property 100 percent because of an unfounded and incompetent conclusion that the transmission line posed a hazardous condition; and (e) damaged the residue of the property notwithstanding the fact that no competent



evidence was introduced regarding the effect, if any, of transmission line easements on adjacent comparable subdeveloped property.

(5) The Court erred by refusing to strike from the record the inflammatory and prejudicial remarks made by counsel for the landowners and the landowners' appraiser to the effect that the area south of the proposed right-of-way easement was landlocked from the remaining residue of the landowners' property, notwithstanding language in the Petition indicating otherwise.

(6) The Court erred by permitting the landowners' appraiser to testify about a potential danger of the transmission line to the lake located on the residue of the property notwithstanding the fact that he was incompetent to testify about electricity and that there was no other evidence in the record upon which he could have made that determination.

(7) The Court erred in overruling the Exception to the Report of Condemnation Commissioners and Motion for a New Trial and confirming the Report of the Condemnation Commissioners.

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, Vepco states that the Transcript of the evidence heard at the trial of this case on October 28, 1977,

together with all the incidents of the trial are to be filed and made a part of the record pursuant to the Court's final order, dated March 2, 1978.

VIRGINIA ELECTRIC AND POWER COMPANY

By \_\_\_\_\_

\_\_\_\_\_  
Of Counsel

J. Sloan Kuykendall  
J. E. Wetsel, Jr.  
Kuykendall, Whiting, Costello & Hanes  
Post Office Box 2760  
Winchester, Virginia 22601

Joseph M. Spivey, III  
Gregory N. Stillman  
Hunton & Williams  
Post Office Box 1535  
Richmond, Virginia 23212

Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of March, 1978, I caused a copy of the foregoing Notice of Appeal and Assignments of Error by Virginia Electric and Power Company to be mailed to W. A. Johnston, Esq., Harrison & Johnston, 21 South Loudoun Street, Winchester, Virginia 22601, counsel of record for defendants.

\_\_\_\_\_  
Gregory N. Stillman

1 VIRGINIA: IN THE CIRCUIT COURT OF WARREN COUNTY

2 -----

3 VIRGINIA ELECTRIC AND POWER COMPANY  
4 Petitioner

5 vs. AT LAW NUMBER 4393

6 ROBERT AND LUCIA A. LADO  
7 Defendants

8 -----

9 Circuit Courtroom,  
10 Warren County Courthouse  
Front Royal, Virginia  
October 28th, 1977.

11 The above-entitled matter came on to be heard for  
12 the purpose of trial before commissioners in a land condemnation  
13 suit, at 9:30 a.m.

14 BEFORE:

15 THE HONORABLE JUDGE DUNCAN C. GIBB  
16 presiding

17 APPEARANCES:

18 For the Petitioner

J. SLOAN KUYKENDALL, ESQ.,  
Kuykendall, Whiting,  
Costello & Hanes,  
20 South Cameron Street,  
Winchester, Virginia 22601

21 GREGORY N. STILLMAN, ESQ.,  
Hunton & Williams,  
P. O. Box 1535,  
22 Richmond, Virginia 23212

23 For the Defendants

24 WILLIAM A. JOHNSTON, ESQ.,  
Harrison & Johnston,  
21 South Loudoun Street,  
Winchester, Virginia 22601

1 went on their view.

2 THE COURT: All right. Mr. Stillman.

3 MR. STILLMAN: Mr. Humphrey.

4 THE COURT: Mr. Humphrey.

5 MR. JOHNSTON: If the Court please, I move the  
6 witnesses be sworn and excluded during the hearing of the evi-  
7 dence.

8  
9 THE COURT: All right. Who will they be?

10 MR. STILLMAN: Your Honor, there may be some witnesses  
11 that we might call but we don't know yet. I will just ask that  
12 they leave the...go on and leave the courtroom. There is no...  
13 no use to swear them in because I don't know if we are going  
14 to call them.

15 THE COURT: All right. All right. All right, sir.

16 WHEREUPON, the witnesses were called, sworn, and  
17 excluded by the Court during the hearing of the evidence.

18 WHEREUPON,

19  
20 SCOTT C. HUMPHREY

21 was called as a witness on behalf of the petitioner and, after  
22 having been first duly sworn, was examined and testified as  
23 follows:

24 DIRECT EXAMINATION

1 BY MR. STILLMAN:

2 Q Mr. Humphrey, we have gone through your qualifications  
3 as a real estate expert in this court several times but I think  
4 there is one gentleman of the commission who...who hasn't heard t  
5 yet. So for his benefit I would like to go through them  
6 briefly again. Would you state your full name, your present  
7 address, and your present occupation?  
8

9 A My name is Scott C. Humphrey. My address is 311  
10 South Washington Street, Alexandria, Virginia. I am a real  
11 estate appraiser and broker and have been in that profession  
12 for the past twenty (20) years.

13 Q And what education do you have to prepare you to be  
14 a real estate appraiser?

15 A I have a B. S. Degree in business administration and  
16 after my discharge from the service I went back to American  
17 University for several years night school taking graduate  
18 courses in the field of real estate and insurance. I subse-  
19 quently have taken other courses and seminars to upgrade my  
20 techniques over...over the years since I have been in the  
21 real estate appraisal practice.  
22

23 Q Have you been engaged as an expert witness before in  
24 condemnation cases?

1           A     I have been doing appraisal work in condemnation cases  
2 for the past eighteen (18) years.

3           Q     And in that capacity have you testified on behalf of  
4 the landowners as well as the condemning authorities?

5           A     Yes, sir. I have.

6           Q     And in what counties?

7           A     In Fairfax County. In Prince William County. Fauquier  
8 County. Loudoun. Prince William. Clarke. And Warren. And  
9 Frederick. I believe that is...and Arlington County. The  
10 Cities of Alexandria and the City of Fairfax.

11           Q     Mr. Humphrey, have you been retained by Virginia  
12 Electric and Power Company in this case to conduct an appraisal  
13 of the property which is being acquired today?

14           A     Yes, sir. I have been so employed.

15           Q     And in that regard have you read the petition in  
16 condemnation which has been filed by Virginia Electric and  
17 Power Company?  
18

19           A     Yes, sir. I have.

20           Q     Okay. Given that could you describe for the commis-  
21 sioners briefly what rights are being acquired as a result of  
22 this easement?  
23

24           A     The rights that are being acquired as a result of this

1 easement consist basically of...of three (3) rights. First  
2 of all the power company is acquiring 17.88 acres of land in  
3 right of way. A permanent...there will be a permanent easement  
4 approximately one hundred and fifty (150) feet wide extending  
5 a distance across the total property. This easement is being  
6 acquired for the purpose of the power company constructing and  
7 maintaining a power line...transmission and power line. In  
8 addition to this perpetual right to use this 17.88 acres of  
9 land the power company is further acquiring the...  
10

11 MR. JOHNSTON: Excuse me, Mr. Humphrey, I didn't  
12 hear you. To...to...to build a power line you say?

13 THE WITNESS: Yes, sir.

14 MR. JOHNSTON: If the Court please, that...I...I  
15 move that answer be stricken as irrelevant to this case. That  
16 isn't the right acquired in this case in the petition.  
17

18 MR. STILLMAN: If the Court please, I...as I read  
19 the petition that is exactly what is the right being acquired.

20 MR. JOHNSTON: Well...

21 MR. STILLMAN: What specifically do you...

22 MR. JOHNSTON: I am referring to the language in  
23 Paragraph Four on Page Two where it is the right...it is  
24 spelled out to be the right to acquire an unlimited number of...

1 or the right to acquire...to construct an unlimited number of  
2 lines together with an unlimited amount of attachments, wires,  
3 equipments, accessories...

4 THE COURT: Yes, sir. That might be a play on  
5 words but you...you are correct. It is one or more lines, I  
6 believe, Mr. Humphrey.

7 THE WITNESS: Yes, sir. That is the precise language  
8 which says that they are acquiring the right to construct,  
9 operate, and maintain one or more lines with poles, towers,  
10 structures together with all wires, attachments, equipment,  
11 accessories, appurtenances described in connection therewith...

12 MR. JOHNSTON: Well excuse me, sir. That is incorrect.

13 THE WITNESS: ...the facilities for the purpose of  
14 transmitting or distributing electric power is the specific...  
15 specific wording.

16 MR. JOHNSTON: Excuse me, sir, but if the Court please,  
17 he has misread the most important word in there. It isn't  
18 described. It is desirable..

19 MR. STILLMAN: It is not what?

20 MR. JOHNSTON: The word...he read the word appurtenance  
21 described in connection therewith. The words is the appurtenance  
22 desirable in connection therewith which is the key operative  
23



1 word.

2 THE COURT: Yes, sir. Mr. Humphrey, you...

3 THE WITNESS: I am sorry. I didn't mean to. The  
4 first word, the word described is up in the second sentence  
5 where it says right of way described herein. Further down in  
6 the third sentence it says accessories and appurtenances desir-  
7 able in connection therewith in parentheses the facility and end  
8 parentheses if I have read that now correctly, Mr. Johnston.

9 BY MR. STILLMAN:

10 Q Well, Mr. Humphrey, as a result of your investigation  
11 in this case have you had occasion to visit Mr. Lado's property?

12 A Yes. I have.

13 Q Could you describe generally for the commission  
14 the...the Lado property from which the subject easement is  
15 being acquired?

16 MR. JOHNSTON: Now if you are going on to another  
17 subject, excuse me, I...I renew my objection that the evidence...  
18 that the testimony be stricken because he was asked to describe  
19 the right acquired and he hasn't described that which is  
20 actually found on Page Four Paragraph Six.

21 MR. STILLMAN: Your Honor, I thought we had cleared  
22 that up. He just read the petition word for word.

1 MR. JOHNSTON: He read Paragraph Four on Page Two  
2 which has to do with the facilities and he was asked the ques-  
3 tion to describe the estate that is being acquired and that is  
4 set forth on Page Four Paragraph Six.

5 MR. STILLMAN: Your Honor, I asked him to describe  
6 generally the rights being acquired by the power company. If  
7 Mr. Johnston wants to read the petition to the commissioners  
8 he is certainly entitled to.

9 THE COURT: I think he has the right to cross examine  
10 him on it. The objection is overruled.

11 MR. JOHNSTON: Exception to the Court, please.

12 THE COURT: Yes, sir.

13 MR. JOHNSTON: And may I state that the ground for...  
14 for the objection is that I think it is misleading for the  
15 witness to testify as to the value of some right which is at...  
16 by his own testimony at variance and substantial variance with  
17 the right that is spelled out in the petition.

18 THE COURT: I think he can continue.

19 MR. STILLMAN: If it please...if it please the Court,  
20 for the record Mr. Humphrey stated that he read the entire petiti  
21 and that he is basing his appraisal upon the reading of the  
22 entire petition not just simply one portion of it.

Humphrey - direct

1 MR. JOHNSTON: Well if he is he should testify to it.

2 THE WITNESS: Your Honor, I was not...I wasn't  
3 through with my answer when I was interrupted by Mr. Johnston.  
4 if...who questioned me about the first right that was being  
5 acquired under the easement and I never have described what I ha  
6 previously said were three (3) basic rights that were in the  
7 petition. I would like to be able to finish that answer if I  
8 could.  
9

10 THE COURT: Yes, sir. Go ahead.

11 MR. STILLMAN: Go ahead.

12 THE WITNESS: All right. The...in addition to the  
13 rights of the 17.88 acres of...of permanent easement being  
14 acquired for the construction of the power line or lines the  
15 second right that I considered that was being acquired was the  
16 right to trim outside of the one hundred and fifty (150) foot  
17 wide easement strip any trees, shrubberies, or any limbs that  
18 would if in the opinion of the company be considered to be  
19 dangerous if those trees or limbs were to fall so that they  
20 would have the right to...to trim trees or cut trees outside  
21 of the one hundred and fifty (150) foot wide strip and would  
22 be able to do that without any further compensation within  
23 three (3) years from the time of this construction of this line.  
24

1 After the three (3) year time period they still have the right  
2 to come in...they are acquiring the right to come in and cut any  
3 trees that would in the future grow up that would endanger  
4 this line. They do have the responsibility under this agree-  
5 ment, this petition, that they have to pay the market value of  
6 the trees that are destroyed by that such trimming. The third  
7 right, basic right, that they are acquiring is the right to go  
8 on to this easement at any time in the future in order to...to  
9 maintain the line, to replace the line, to repair the line,  
10 to...to service it in any manner in which they deem fit and  
11 they have the right to use any private road that exists on  
12 the property for such purpose and if there is no private road  
13 or public road available to it they then have the right to  
14 cross the property at any other point that in their opinion is  
15 desirable for servicing and construc...and maintaining their  
16 power line. They do have the responsibility if they destroy  
17 crops or destroy the...the driveway or any...any physical  
18 destruction that they do to the property they do have the  
19 responsibility of...of paying for any such damage that would  
20 occur any time in the future as a result...as a result of that  
21 right to...to go across the property to get on to the easement  
22 right  
23 of way.  
24

Humphrey - direct

1 MR. STILLMAN: Okay. Thank you.

2 MR. JOHNSTON: If the witness has now completed what  
3 he feels is a full answer to the question 'what are the  
4 rights acquired' I renew my objection in view of the fact that  
5 he has ignored the first two (2) paragraphs and particularly  
6 the second paragraph of the Paragraph Six of the...of...on Page  
7 Four of the petition.  
8

9 THE COURT: The objection is overruled.

10 MR. JOHNSTON: Exception.

11 BY MR. STILLMAN:

12 Q Mr. Humphrey, I believe you have already testified  
13 that you have visited the Lado property. Could you describe  
14 generally for the commission the...the property which is the  
15 subject of this condemnation proceeding today for the commis-  
16 sioners?  
17

18 A Yes, sir. This property consists of the parcel of  
19 land that is situated on the south side of Route 55 between  
20 Front Royal and Linden. The property is roughly rectangular  
21 in shape having approximately twenty-six hundred (2,600) feet  
22 of road frontage on Route 55 and extends back approximately  
23 fifty-four (5,400) or fifty-five hundred (5,500) feet back up  
24 in to the mountain making the property about twice as deep or

1 a little more than twice as deep as it is wide but generally  
2 I would describe this property as being roughly rectangular  
3 in shape. The property has...the best estimate that I have is  
4 approximately one hundred and twenty-five (125) to one hundred  
5 and thirty (130) or thirty-five (135) acres of cleared land  
6 that is situated mostly along the Route 55 road frontage and  
7 the cleared land extends on back up to behind where the improve-  
8 ments or the dwelling is located with a very small amount of  
9 cleared area behind the improvements which a portion of which is  
10 where the proposed right of way will be crossing. The land has  
11 a rising topography, an elevation that...that extends from  
12 Route 55 in a southerly direction upward to approximately some  
13 twelve (1,200) or thirteen hundred (1,300) feet as best I can  
14 determine foot elevation so there is a high elevation of this  
15 land as it goes back. There are several...there is several  
16 ravines on the property, one of which is located where the  
17 natural drainage area is and the lake has been constructed  
18 in that drainageway which is...is along the eastern boundary of  
19 the property. The property has agricultural zoning which is  
20 a...which is a...a zoning classification that does permit the  
21 residential development with a restriction on how many times  
22 it can be subdivided. It can be subdivided up to fourteen (14)

1 times without being rezoned for residential subdivision but  
2 it will permit one acre lots within that...those fourteen (14)  
3 subdivision. It will permit one acre lots with a minimum width  
4 of one hundred and fifty (150) feet. The property has no public  
5 sewer or water available to it. There is a...a relatively new  
6 three (3) or three and a half (3½) year old house that is  
7 situated on the property, a new home that was built that has no  
8 basement. It is a rambler style home with four (4) bedrooms,  
9 two (2) baths, a living room, and a kitchen, a dining area  
10 combination. It has a nice deck, an L-shaped deck around the...  
11 the...the western and northern exposure which is toward the  
12 Front Royal view. I believe that that adequately describes  
13 the property, Mr. Stillman, unless I have neglected to mention  
14 something.  
15

16 Q Okay. Mr. Humphrey, as a result of your investigation  
17 have you made a determination of the value of the entire property  
18 before the acquisition of the easement?

19 A Yes, sir. I have.

20 Q And how did you reach that conclusion?

21 A I reached that conclusion by first of course looking  
22 at the property and being on the property and secondly making  
23 an investigation of what I found to be a very limited number  
24 of market sales that had taken place within the last several

Humphrey - direct

1 years in order to compare what market response was on other  
2 properties with adjustments for differences, how they would  
3 relate and compare to the subject property but I did consider  
4 several sales that I felt were helpful to me in...in support  
5 of the valuation conclusions that I reached.  
6

7 Q I take it then that you have looked at a number of  
8 comparable sales. Now would you tell for the...tell the  
9 commission what specific comparable sales you examined and  
10 your...your ultimate conclusions as far as their effect on the  
11 marketability of this particular piece of property?

12 A Well as I said there were a limit...I found a limited  
13 number of...of market transactions, even more limited number  
14 of sales of...of tracts of four hundred (400) acres in size  
15 which is an unusually large size tract but I did consider  
16 the following sales. The first sale that I had looked at and  
17 investigated was the sale of a smaller parcel of only 9.76 acres  
18 of land that is located in the Happy Creek Magisterial District.  
19 It has the same zoning, agricultural zoning. It is roughly  
20 square in shape and it sold in October of 1973 from Charles..  
21 from John Feltner to Charles B. and Mary Ann Wood. This  
22 property is off of Happy Creek Road and is accessible over a  
23 private road that extends from Happy Creek Road back in to  
24



1 where the property lies and it lies along the south boundary  
2 line of the Interstate 66. That small parcel of land had a  
3 little gazebo, screened gazebo type building on it and shed, but  
4 it sold in 1973 for Thirteen Thousand Five Hundred Dollars  
5 (\$13,500.00) or Eighteen...or Thirteen Hundred and Eighty-two  
6 Dollars (\$1,382.00) per acre for this 9.7 acre smaller parcel.  
7 I also considered the sale of a...a little larger tract of land  
8 again not in the same geographical area but certainly in an  
9 area that I felt was comparable to this Route 55 area and that  
10 is the sale of fifty-one (51) acres of land that is just a short  
11 distance north of...of Rockland that is across from the country  
12 club and it was purchased by the country club, Valley Golf  
13 Club, from Alexander Earle and that was the purchase that was  
14 made in December of 1976. That land was all cleared land, had  
15 level topography, good relationship to the road frontage and  
16 of course had the influences of the...of the...the country club.  
17 That property sold for One Hundred and Fourteen Thousand  
18 Dollars...One Hundred and Fourteen Thousand Eight Hundred Dollars  
19 (\$114,800.00) or approximately Twenty-two Hundred and Fifty Dollars  
20 (\$2,250) per acre and I considered that that sale in...in  
21 relationship of time was a very recent comparable because the  
22 valuation date for the subject property is January of 1977 and  
23  
24

1 this was a December of 1976 so I didn't feel there was any time  
2 adjustment needed. This was a fifty-one (51) acre parcel of  
3 land compared to a four hundred (400) acre parcel of land so  
4 there certainly needed to be a downward adjustment for the  
5 Twenty-two Hundred and Fifty (\$2,250.00) per acre because of  
6 the large tract. The fifty-one (51) acre parcel was all readily  
7 accessible for development. It had good topography and I  
8 considered it to be in a superior location for any future  
9 residential purpose than the...the subject property. The major  
10 adjustment of course does have to be the difference between  
11 a fifty-one (51) acre sale and a four...I mean a fifty-one  
12 (51) acre property and a forty-one (41) acre property. The  
13 next sale that I considered was the sale of a parcel of land  
14 just on the other side of...across the mountain from the subject  
15 property which was the sale from a F. W. Holbrooke to Carroll J.  
16 Savage and that sale was in May of 1972 which was nearly five  
17 (5) years, four (4) years and nine (9) months prior to the date  
18 of valuation for the subject property but that property was  
19 one hundred and sixty-seven (167) acres of land. It is located  
20 on Routes 726 and 727 just south of...of Linden. The property  
21 is bounded on one boundary by Firey Run which is the major water  
22 shed on the...on the Fauquier side of the...of the mountain and  
23  
24

1 that property had one hundred and sixty-seven (167) acres in  
2 its entirety. It had some fifteen (15) or twenty (20) acres of  
3 cleared that were right on the road. It fronted on a...a  
4 lake, a nice large lake, which is similar to the lake on the  
5 subject property and it had a cottage type dwelling on it that  
6 certainly added some value to the property and that property  
7 sold in 1972 for Eighty Thousand Five Hundred Dollars (\$80,500.00  
8 for the land and the improvements and just absorbing the improve  
9 value in to the land would have indicated a value of Four  
10 Hundred and Eighty-two Dollars (\$482.00) per acre in 1972. Now  
11 obviously the big adjustment on that property in addition to  
12 there being one hundred and sixty-seven (167) acres as opposed  
13 to four hundred (400) acres was the time difference and I have  
14 reflected in the adjustment of time of this sale, I reflected  
15 an overall value increase from 1972 to 1977 of ten (10) per cent  
16 per year compounded and I believe that the market hasn't  
17 accelerated in this area any...any greater than a ten (10)  
18 per cent per year figure but assuming that my ten (10) per cent  
19 adjustment for time is correct it would indicate that that sale  
20 if it were brought current would be Seven Hundred and Seventy-  
21 eight Dollars (\$778.00) per acre as compared to its Four  
22 Hundred and Eighty-two Dollar (\$482.00) per acre purchase price  
23  
24

1 in 1972. The final sale that I considered was of the subject  
2 property itself. In March of 1973, Mr. Lado purchased this  
3 property from Anthony Haney. He purchased the total four  
4 hundred (400) acres. It had the same land as the land is today  
5 except the improvements have been placed on the property and it  
6 sold in 1973 for Two Hundred and Fifty Thousand Dollars  
7 (\$250,000.00) for the four hundred (400) acres which would be  
8 approximately Six Hundred and Twenty-five Dollars (\$625.00) per  
9 acre and Mr. and Mrs. Lado have added the...the lake and...and  
10 the...the dwelling and improved the road since they have owned  
11 the property. The...in...in adjusting that sale from 1973 up  
12 to the present time assuming again that...that a ten (10) per  
13 cent annual compounded adjustment for time difference for that  
14 four (4) year period would indicate that the subject property  
15 would have a value just of the land alone of Three Hundred  
16 and Sixty-six Thousand Twenty-five Dollars (\$366,025.00)  
17 as of the present time. Based on those land sales I reached  
18 the conclusion of...of fair market value for the total land.

21 Q And would you now advise the commissioners what that  
22 conclusion was?

23 A In determining the value of this entirety I placed  
24 first a value upon the land and then I added the value cost less

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1 the cost of replacement less depreciation for the improvements  
2 and determined a total value of the land and improvements which  
3 was Four Hundred and Fifty Thousand Dollars (\$450,000.00) for  
4 the entire four hundred thousand...four hundred (400) acre  
5 parcel for land and improvements. The breakdown of that Four  
6 Hundred and Fifty Thousand Dollars (\$450,000.00) would be as  
7 follows: four hundred (400) acres at One Thousand Dollars  
8 (\$1,000.00) per acre. I placed a value upon the lake of  
9 Fifteen Thousand Dollars (\$15,000.00) and a depreciated valu-  
10 ation on the improvements of Thirty-six Thousand Four Hundred  
11 and Sixty-one Dollars (\$36,461.00) so if you add Four Hundred  
12 Thousand (\$400,000.00) to Fifteen Thousand (\$15,000.00) on the  
13 lake and Thirty-six Thousand Four Hundred and Sixty-one  
14 (\$36,461.00) you would have a total valuation of Four Hundred  
15 and Fifty-one Thousand Four Hundred and Sixty-one Dollars  
16 (\$451,461.00) and I rounded that off to a before value of the  
17 entirety of Four Hundred and Fifty Thousand Dollars (\$450,000.00)  
18  
19

20 Q All right. Given that appraisal of the entire property  
21 how did you go about determining the value of the area being  
22 acquired today?

23 A Well the 17.88 acres that is being acquired in the  
24 easement I placed a value considering that the fee value of the

1 land would be not...would be One Thousand Dollars (\$1,000.00)  
2 per acre the property owner still would...still will retain  
3 the ownership of this land subject to the easement and I felt  
4 that the easement had a value of at least ninety (90) per cent  
5 of the One Thousand Dollars (\$1,000.00) an acre so that Nine...  
6 Nine Hundred Dollars (\$900.00) an acre for the 17.88 acres  
7 is the valuation that I determined for the...for the land taken  
8 in the easement which would be Sixteen Thousand and Ninety-two  
9 Dollars (\$16,092.00) for the 17.88 acres in easement.  
10

11 Q Mr. Humphrey, as a result of your investigation have  
12 you had occasion to determine whether the residue...the remaining  
13 residue of the property has been damaged as a result of the  
14 acquisition of the easement?

15 A Yes, sir. I did make such consideration.

16 Q And in making that determination did you make a  
17 determination of what the highest and best use of this property  
18 was?  
19

20 A Yes, sir. I did.

21 Q And what was that?

22 A In my opinion the highest and best use of this  
23 property is as investment holding land using it for recreational  
24 purposes as it is being used until such time as there would be

1 market demand for some type of large lot subdivision in to  
2 smaller parcels.

3 Q Did you make any general studies whatsoever to deter-  
4 mine the effect of the high tension transmission lines upon  
5 the marketability of the sub developed property?  
6

7 A Yes, sir. I have made such studies.

8 Q All right. As a result of your investigations then  
9 could you advise the commission generally what you consider  
10 to be the damages to the residue and how you computed it?

11 A The two (2) elements that I considered in the...in  
12 the con...in the concept of damages to the residue primarily  
13 was the effect that the proposed easement would have upon the  
14 land and secondly the effect that the proposed easement would  
15 have upon the dwelling which is situated approximately one  
16 hundred and ten (110) or fifteen (115) feet north of the...  
17 of the line. In determining the...the...the second considera-  
18 tion which is the damages to the...to the improvements if any  
19 I did consider that the improvements if they were to be built  
20 on that property after the line went on the property that they  
21 probably wouldn't put the house in the same location as where  
22 the house is now. Chances are you would stay away, farther  
23 away, from...from that easement with...with a new dwelling if...  
24

1 if you had the opportunity to build a dwelling after the line  
2 is there so I felt that the house was what we call or what I  
3 call a misplaced improvement on the...on the...on the site  
4 and because it was a misplaced improvement I felt that it had  
5 been depreciated. It suffered depreciation which would be  
6 a loss in value in the market place and in determining that  
7 loss in value I placed a value on the...on the improvements  
8 of...of Thirty-six Thousand Four Hundred and Sixty-one Dollars  
9 (\$36,461.00) before the take. I felt that the...the dwelling  
10 and the...the fencing and the sundeck or the open deck on the  
11 dwelling that those improvements had a value of...of Thirty-six  
12 Thousand Dollars (\$36,000.00) before the take and I felt that...  
13 that they had suffered a loss of one-third of their valuation  
14 before. In other words if they were worth...worth Thirty-six  
15 Thousand Dollars (\$36,000.00) before that these improvements  
16 would be worth Twenty-four Thousand Dollars (\$24,000.00) after-  
17 wards so that the dwelling and the improvements themselves  
18 had suffered a loss in value of Twelve Thousand One Hundred  
19 and Fifty-three Dollars (\$12,153.00). Now in reaching the  
20 conclusion about the one-third of the replacement value I came  
21 to the conclusion that...that a four (4) bedroom dwelling with  
22 two (2) baths new and in good...in good condition that in spite



1 of the fact that it was next to a power line or...or north of  
2 the power...north of the power line by only one hundred and  
3 ten (110) or fifteen (115) feet it still would have a value  
4 in the market place of at least Twenty-four Thousand Dollars  
5 (\$24,000.00) for a...as a residential use so that...  
6

7 MR. JOHNSTON: If the Court please, excuse me, Mr.  
8 Humphrey. I...I...the...the witness continually refers to the  
9 power line as if the power line is what is being acquired in  
10 this case and it simply isn't and I renew my objection unless  
11 I be taken to waive it because he is continually referring to  
12 something that is not what is described in the petition.

13 MR. STILLMAN: I think that point has been made.

14 THE COURT: Yes, sir. The objection is overruled.

15 MR. STILLMAN: Go ahead, Mr. Humphrey.

16  
17 THE WITNESS: The...the second item that I have  
18 considered in...in the way of damages resulting to the residue  
19 of this property is of course to the four hundred (400) acres of  
20 land. This easement which crosses approximately twenty...  
21 fifty-two hundred (5,200) feet, almost a mile, or about a mile  
22 crosses this property approximately a mile in length, crosses  
23 a...a little bit of cleared land which is the cleared land  
24 right around the improvements but it mostly crosses the

1 mountain land and I considered that at certain portions of  
2 parts of this property that the easement would have...the ease-  
3 ment itself would have a more detrimental impact on the residue  
4 than on...than on other parts of the four hundred (400) acres.  
5 Because most of this land is...is...is the...where the easement  
6 is crossing is wooded land I determined that the basic effect  
7 of these damages if any to the residue would be the land area  
8 that is immediately adjacent to this easement. Therefore I  
9 took a...a...I took a strip of one hundred and fifty (150) feet  
10 wide which is the same width of the easement itself on each  
11 side of the easement and said that it would be necessary to have  
12 that one hundred and fifty (150) feet to be used and provided  
13 as a screen for the rest of the property to...to take away  
14 the detrimental impact of the easement if any on the entire  
15 residue of the property so that I determined that there was  
16 seventeen point...approximately 17.99 acres in a...a strip on  
17 each side of the...of the right of way or approximately 35.88  
18 acres and I said that in my opinion that land had suffered a  
19 value loss of seventy-five (75) per cent of its before value.  
20 In other words if it were worth One Thousand Dollars (\$1,000.00)  
21 an acre before the acquisition of the easement that...that  
22 after the acquisition of the easement it would only be...it

1 would only have a value of twenty-five (25) per cent of the  
2 fee value because it would be necessary to...to...to commit  
3 that land to...to help hide or...or cause the...the easement  
4 to have less impact upon any other portions of the property  
5 so in that thirty-five (35) acres, 35.9 acres of land, at a  
6 seventy-five (75) per cent of the fee value would be Twenty-  
7 six Thousand Nine Hundred and Eighty-five Dollars (\$26,985.00)  
8 to the land and I added that to the Twelve Thousand One Hundred  
9 and Fifty-three Dollars (\$12,153.00) loss in value to the improve  
10 ments and would have a total valuation for damages of Thirty-  
11 nine Thousand One Hundred and Thirty-eight Dollars (\$39,138.00)  
12 for the damages to the residue.  
13

14 BY MR. STILLMAN:

15 Q Now does that figure of Thirty-nine Thousand One  
16 Hundred and Thirty-eight Dollars (\$39,138.00) represent what  
17 you consider to be the difference between the fair market value  
18 of the residue immediately before the taking and the fair  
19 market value of the residue immediately after the taking  
20 considering the nature of the taking and the facilities to be  
21 erected thereon?  
22

23 A Yes. It does.

24 Q What then did you determine to be the total value

1 of the easement being acquired and the damages to the residue?

2 A Fifty-five Thousand Two Hundred and Thirty Dollars  
3 (\$55,230.00).

4 MR. STILLMAN: That is all.

5 CROSS EXAMINATION

6  
7 BY MR. JOHNSTON:

8 Q Mr. Humphrey, you said that you had...had familiarized  
9 yourself with the petition in this case. The...I assume then  
10 that you have familiarity with...with Paragraph Number Six?

11 A Yes, sir. I have familiarized myself with Paragraph  
12 Number Six.

13 Q Well now do...do I understand that on direct examination  
14 you...you have discussed three (3) things and let me discuss  
15 them in the inversed order that you talked about. You talked  
16 about the access easement.

17 A That is correct.

18 Q And that is described I think later in Paragraph...

19 MR. STILLMAN: Your Honor, may I interrupt just one  
20 second. I see the direction this is going. I...I would remind  
21 Mr. Johnston that Mr. Humphrey said he had discussed three (3)  
22 basic things that were germane to the determination in...in  
23 addition to reading the entire petition.  
24

1 MR. JOHNSTON: All right. Mr. Ritter, please.

2 THE COURT: We will get the commissioners.

3 WHEREUPON, the bailiff brought the commissioners  
4 back in to the courtroom.

5 WHEREUPON,

6 WILLIAM H. RITTER

7 was called as a witness on behalf of the defendants and, after  
8 having been first duly sworn, was examined and testified as  
9 follows:  
10

11 DIRECT EXAMINATION

12 BY MR. JOHNSTON:

13 Q State your name for the record, please, sir?

14 A William H. Ritter.

15 Q Where do you live?

16 A Front Royal.

17 Q What occupation have you?

18 A I am a real estate broker.

19 Q How long have you been in that business?

20 A I have been licenced to be in real estate for ten (10)  
21 years.  
22

23 Q Where have you had your real estate experience?

24 A Here in Warren County.

1 Q Mr. Ritter, have you familiarized yourself with the  
2 value of real property in and around Warren County, Virginia?

3 A Yes. I have.

4 Q Have you bought and sold properties in this county?

5 A Yes. I have.

6 Q Have you represented purchasers and sellers in that  
7 capacity?  
8

9 A Yes, sir.

10 Q And has that experience been continuous throughout  
11 your last ten (10) years of real estate business experience in  
12 Front Royal?

13 A Yes, sir.

14 Q Have you made a study and appraisal of the land that  
15 is owned by Doctor and Mrs. Lado which is the subject of this  
16 proceeding?  
17

18 A Yes. I have.

19 Q Will you state what in your opinion is the highest  
20 and best use of that property at this time?

21 A Subdivision.

22 Q And what...what...what is the...will you describe  
23 for the commissioners the property that you have under appraisal  
24 and the characteristics of it that you think are important to

1 determine its value?

2           A     It is situated approximately four (4) miles east of  
3 Front Royal on the south side of Route 55. It is contiguous  
4 to two (2) other residential developments in that we have Apple  
5 Mountain Lake on the north side of 55 and then adjoining this  
6 Lado Tract we have High Knob which is a residential development.  
7 They are in much smaller parcels. We now have a subdivision  
8 ordinance of five (5) acre parcels and because of the location  
9 in relation to other residential subdivision parcels I believe  
10 that the highest and best use of this particular tract is  
11 residential development.  
12

13           MR. JOHNSTON: If the Court please, I...I move that  
14 this aerial photograph of the Department of Agriculture formed  
15 in 1976 be introduced in evidence as Property Owner's Exhibit  
16 Number One.  
17

18           THE COURT: Without objection so admitted.

19 BY MR. JOHNSTON:

20           Q     I hand you Exhibit Number One, Mr. Ritter, and I ask  
21 you...it purports to be a...an aerial photograph showing the  
22 vicinity including the Lado Property...and I ask you to point  
23 out on there if you will the adjoining property of High Knob  
24 that you just described.

Ritter - direct

1 A That would be in this area here.

2 Q That is toward the bottom and the bottom left of the  
3 picture?

4 A Yes. It is south and toward west.

5 Q Thank you, sir. Now at that highest and best use..

6  
7 THE COURT: Mr. Johnston, before you...you better get  
8 her to mark it before we proceed.

9 MR. JOHNSTON: I shall.

10 BY MR. JOHNSTON:

11 Q At that highest and best use, Mr. Ritter, what in  
12 your judgment was the value of the property as of this time?

13 A Eight Hundred Dollars (\$800.00) per acre. Four  
14 hundred (400) acres at Eight Hundred Dollars (\$800.00) per acre  
15 is Three Hundred and Twenty Thousand Dollars (\$320,000.00).

16 Q Are there improvements on the take that add value  
17 other than the land value, improvements on the property itself  
18 rather?

19  
20 A Yes. The house I placed a value of Forty Thousand  
21 Dollars (\$40,000.00) on the house and the lake a value of  
22 Thirteen Thousand Five Hundred Dollars (\$13,500.00). The total  
23 value of land and improvements of Three Hundred and Seventy-  
24 three Thousand Five Hundred Dollars (\$373,500.00).



1 Q Now that is...that is your estimate as I understand  
2 it of what the whole property is worth on today's market?

3 A That is correct.

4 Q Now did you undertake to make an appraisal of the  
5 rights acquired by the condemnor in this proceeding within  
6 the 17.88 acre strip shown on their exhibit?  
7

8 A The 17.88 acres at one hundred (100) per cent of  
9 Eight Hundred Dollars (\$800.00) per acre was Fourteen Thousand  
10 Three Hundred and Four Dollars (\$14,304.00).

11 Q Is that your estimate of the value of the rights  
12 acquired in this proceeding?

13 A Yes, sir.

14 Q May I ask you whether in...in making that appraisal  
15 you have familiarized yourself with the definition of the  
16 estate and rights acquired contained in the petition...petition  
17 in this case?  
18

19 A I have.

20 Q Now did you undertake to determine whether in your  
21 opinion there was damage to the remaining property by reason  
22 of the taking in this case?

23 A In my judgment there is.

24 Q Tell the commissioners what is the extent of that

Ritter - direct

1 damage, the measure of it as you judge it, and how you arrived  
2 at your opinions.

3 A The northern remainder of 218.63 acres I believe to  
4 be damaged fifty (50) per cent by...

5 Q Now may I ask you...if the Court please, is one of  
6 these in evidence?  
7

8 MR. KUYKENDALL: I don't believe so. No.

9 MR. STILLMAN: I don't think so.

10 THE COURT: No. I don't think it has actually been  
11 introduced. Do you have one that we can mark for...

12 MR. STILLMAN: Yes.

13 MR. JOHNSTON: It would be Petitioner's Exhibit Number  
14 One.

15 BY MR. JOHNSTON:

16 Q Referring to Petitioner's Exhibit Number One, can  
17 you describe the northern remainder of which property has been  
18 described?  
19

20 A This parcel through here containing 218.63 acres.

21 Q And that is the area that you pointed...that you  
22 just pointed to is the area between Route 55 and the take?

23 A That is correct.

24 Q All right, sir. How is that affected in your judgment

1 by the taking of the easement?

2 A I believe it is damaged in the amount of fifty (50)  
3 per cent or Four Hundred Dollars (\$400.00) per acre for a total  
4 damage of Eighty-seven Thousand Four Hundred and Fifty-two  
5 Dollars (\$87,452.00).

6  
7 Q Now why have you come to that conclusion, Mr. Ritter?

8 A I believe that the presence of this power line across  
9 the property would be detrimental in the marketing of the pro-  
10 perty from the standpoint of the would-be buyer. I think this  
11 would be objectionable to him.

12 Q All right. On...on what ground?

13 A The destruction of scenic beauty and other things that  
14 go along with that type of an easement.

15 Q All right, sir. In your judgment was the land on the  
16 other side, the south side of the right of way, affected by  
17 the easement?  
18

19 A I have got 163.49 acres which in my judgment is  
20 damaged in the amount of Six Hundred Dollars (\$600.00) per  
21 acre for a total of Thirty-two Thousand Six Hundred and Ninety-  
22 eight Dollars (\$32,698.00).

23 Q All right, sir. Now in...and...and...and why was  
24 that land...is that...is that the after value now or the

1 damage you are testifying to?

2 A The southern remainder of 163.49 acres the value is  
3 Two Hundred Dollars (\$200.00) after the take or for damage of  
4 Six Hundred Dollars (\$600.00) per acre.

5 Q Well that is an after value of Thirty-two Thousand  
6 Six Hundred and Ninety-eight (\$32,698.00)?  
7

8 A That is correct.

9 Q The damage was Six Hundred Dollars (\$600.00) an acre,  
10 isn't it?

11 A Right. Yes, sir.

12 Q So...

13 THE COURT: Let's go over that again, Mr. Johnston.

14 MR. JOHNSTON: All right. I...I wasn't sure I heard  
15 him correctly.

16 MR. KUYKENDALL: Well I...I object to the leading  
17 question if you are going to ask him a leading question. If...if  
18 you are going to let him...  
19

20 THE COURT: Um-hum. I will make a decision.

21 BY MR. JOHNSTON:

22 Q What is the after value of the land lying south of  
23 the take?

24 A Two Hundred Dollars (\$200.00) per acre.

1 Q And the after value of the land lying north of the  
2 take?

3 A Four Hundred Dollars (\$400.00). per acre.

4 Q And the before value of both of those tracts was  
5 Eight Hundred Dollars (\$800.00) an acre?  
6

7 A Eight Hundred Dollars (\$800.00) per acre, yes, sir.

8 Q Now why is it your judgment that the after value  
9 of the southern remainder is Two Hundred Dollars (\$200.00) per  
10 acre?

11 A It is separated from the front portion of the property.

12 Q By the easement?

13 A Yes, sir.

14 Q And have you taken in to consideration the rights  
15 that the landowner has within the easement in making that judg-  
16 ment?  
17

18 A Yes, I have, sir.

19 Q And what have you concluded in that regard?

20 A I believe that virtually all of his rights are taken

21 Q All right, sir. And that is the assumption upon  
22 which you have made your appraisal?

23 A That is correct.

24 Q Have you considered whether or not the improvements

1 on the property are affected by the taking?

2 A Yes. I have. In my judgment the house is damaged  
3 by fifty (50) per cent of its value because of its proximity  
4 to the location of the line.

5 Q And what is that proximity as you judge...as you find  
6 it?  
7

8 A One hundred and twenty-five (125) feet from the line  
9 is the location of the house.

10 Q And how about the...and so the after value of the  
11 house is what?

12 A Twenty Thousand Dollars (\$20,000.00).

13 Q All right, sir. Are there other improvements affected?

14 A I believe the lake to be affected because of the  
15 location of the line in relation to the lake.  
16

17 Q All right, sir. In...in...and how do you measure  
18 the effect of that on the market value?

19 A From the standpoint of recreational use I...I believe  
20 that it is being destroyed by the location of the line in  
21 relation to the location of the lake. Agriculturally there is  
22 enough water that it would not be affected but from the standpoint  
23 of using the lake for recreation I think this would be hazardous.

24 Q So what in your opinion is the fair market value of

1 all the property after the taking?

2 MR. KUYKENDALL: If Your Honor please, I am going to...  
3 would move to strike that statement of this witness about the  
4 fact that this proximity of the line to this lake would be  
5 hazardous. He hasn't qualified as an expert as to the damage...  
6

7 THE COURT: The objection is overruled.

8 MR. KUYKENDALL: Exception noted.

9 THE COURT: Yes, sir.

10 BY MR. JOHNSTON:

11 Q Go ahead, Mr. Ritter. What is the after value of the  
12 entire property, remaining property, after the taking?

13 A The value of the remainder outside of the take before  
14 the take is Three Hundred and Fifty-nine Thousand One Hundred  
15 and Ninety-six Dollars (\$359,196.00).  
16

17 Q All right, sir.

18 A The...less the value of the remainder outside of the  
19 take after the take the total damages we discussed to the  
20 northern, the southern, and the house for a total of One Hundred  
21 and Forty Thousand One Hundred and Fifty Dollars (\$140,150.00)

22 Q One Forty, One Fifty (\$140,150.00) is  
23 the after value of the remainders?

24 A Right.

Ritter - direct

1 Q And you said the before values was Three Fifty-nine  
2 One Ninety-six (\$359,196.00)?

3 A That is correct.

4 Q So...

5 A The damage to the residue is Two Hundred and Nineteen  
6 Thousand Forty-six Dollars (\$219,046.00).  
7

8 MR. JOHNSTON: Thank you, sir. Would you answer Mr.  
9 Kuykendall, please, sir.

10 CROSS EXAMINATION

11 BY MR. KUYKENDALL:

12 Q Mr. Ritter, on how many occasions have you had to  
13 examine and study and make an appraisal for determining the  
14 value of easements of the character that is being acquired  
15 in this case?

16 A Would you state your question again, please.

17 Q Yes. How many times have you had a...had the occasion  
18 to make the...an appraisal and evaluation of...of an easement  
19 of the character that is being acquired in this case?  
20

21 A Approximately six (6).

22 Q And that is here in Warren County?

23 A Yes, sir.

24 Q And what experience if any have you had in determining



1 WHEREUPON,

2 SCOTT C. HUMPHREY

3 was recalled as a rebuttal witness on behalf of the petitioner  
4 and was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STILLMAN:

7  
8 Q Mr. Humphrey, you have already been sworn. Mr.  
9 Humphrey, just now Mr. Ritter, the expert appraiser on behalf  
10 of the landowner, made a statement that he had seen studies  
11 which indicate that...that no matter where a power line easement  
12 exists, adjacent to a sub developed for example piece of pro-  
13 perty that in those instances the sub developed property that is  
14 immediately adjacent to the power line is always the last to  
15 sell. I think you have testified earlier that you have made  
16 studies of your own to determine whether or not the existence  
17 of a power line would affect the marketability of sub developed  
18 property. Do you have an opinion on that particular question  
19 that Mr. Ritter has already testified to?  
20

21 MR. JOHNSTON: If the Court please, I will object  
22 to the witness answering based on the state of the record  
23 now which was that he had made no study of an easement of a  
24 character acquired in this proceeding.

Humphrey - direct

1 MR. STILLMAN: Your Honor, that notwithstanding Mr.  
2 Ritter has made the statement that wherever a power line, any  
3 power line, is immediately adjacent to sub developed property  
4 those parcels are the last...the last parcels to...to sell.  
5 We should have an opportunity to rebut that statement clear and  
6 simply.

7  
8 THE COURT: Yes, sir. The objection is overruled.

9 MR. JOHNSTON: Well as...as...as long as we are clear  
10 that you are not...it is...you are now asking him a question  
11 having to do with...with quote a power line that is not the...  
12 of the type that is in...acquired in this proceeding. That is  
13 my point.

14 MR. STILLMAN: We are making no representations of  
15 that whatsoever.

16 MR. JOHNSTON: Well and...and that being so I think  
17 it is irrelevant.

18  
19 THE COURT: The objection is overruled.

20 MR. JOHNSTON: Exception.

21 BY MR. STILLMAN:

22 Q Do you have an opinion on that, Mr. Humphrey?

23 A Yes, sir.

24 Q Have you made studies of your own?

1           A     I have made studies of my own.

2           Q     Okay. Tell me what studies you have made.

3           A     I made a study of the subdivision...of Shadow Walk  
4     Subdivision which is a subdivision of five (5) acre lots that  
5     was first subdivided and placed on the market for sale. It  
6     was entirely a large lot subdivision with five (5) acre, basicall  
7     five (5) acre minimum lots. There were a few lots that were  
8     a little larger because of the topography and the subdivision  
9     was subdivided in...in...the first lot was sold in January of  
10    1973 and by September of 1973 all lots had been sold and some  
11    of the lots that were adjacent to and within the two hundred  
12    and thirtv (230) foot power line easement were lots that were  
13    sold before lots that were considerably farther away than the...

14                   MR. JOHNSTON: If the Court please, I am going to  
15                   ask that before the witness tell the entire story that he is  
16                   being asked to tell that he just describe the essential charac-  
17                   teristics that make it relevant to this case as to whether or  
18                   not it was or wasn't acquired before or after the subdivision  
19                   was sold.

20                   MR. STILLMAN: Your Honor...Your Honor, this evidence  
21                   is simply to rebut the proposition stated by the landowner's  
22                   own expert...

Humphrey - direct

1 MR. JOHNSTON: Well but there...there is no way...

2 MR. STILLMAN: ...that no matter where a power line  
3 exists a sub developed property is affected. We have got  
4 evidence to rebut that proposition.

5 MR. JOHNSTON: He hasn't...my point is he hasn't yet  
6 said where the line was or whether it was acquired before or  
7 after...  
8

9 THE COURT: I...I agree.

10 MR. JOHNSTON: ...and it may be totally irrelevant  
11 and I can't tell until after he has testified if he is going  
12 to tell the last part of the story first.

13 THE COURT: I agree with you. He has to be more  
14 specific. You have to get the background.

15 BY MR. STILLMAN:

16 Q Well tell...tell the commission the background of  
17 the sub development. I think you have already told them that  
18 it is in...that it is subdivided in to five (5)...five (5) acre  
19 lots. Is that correct?  
20

21 A That is correct.

22 Q And do some of those lots abut a major transmission  
23 line easement?

24 A The subdivision is the Shadow Walk Subdivision. It

Humphrey - direct

1 is in Sections One and Section Two. Section One consisted of  
2 twenty-one (21) lots that were on the south side of a two  
3 hundred and thirty (230) foot Vepco Transmission Line Easement  
4 and Section Two was directly on the north side of the same  
5 two hundred and thirty (230) foot transmission and power line  
6 easement and both the twenty-one (21) lots in Section One and  
7 the Twenty-eight (28) lots in Section Two were sold out within  
8 a nine (9) months time and some of the lots...

9  
10 Q Can you give me the dates on those as to when the..  
11 as to when the sub development actually began selling lots  
12 and when the first sales began?

13 A They began subdi...selling the lots on January the  
14 1st, 1973, and the project was sold out on September the 1st,  
15 1973.

16 Q That includes lots that abutted a major transmission  
17 line easement?

18 A That is correct.

19 MR. STILLMAN: That is all.

20 CROSS EXAMINATION

21 BY MR. JOHNSTON:

22 Q You neglected to tell us what were the rights of  
23 Vepco within their easement, Mr. Humphrey. What were those?  
24

Humphrey - redirect

1 MR. JOHNSTON: Objection. That is irrelevant, if  
2 the Court please. The issue here...

3 MR. KUYKENDALL: It is not...

4 MR. STILLMAN: That is not irrelevant.

5 THE COURT: The objection is overruled. Mr. Johnston,  
6 I think it is...it is very relevant.  
7

8 MR. JOHNSTON: All right. Exception, if Your Honor  
9 please, on the ground that...that it...the..what he sees isn't  
10 at all a limitation on what the rights are that are owned by  
11 the power company in their...in their acquisition.

12 THE COURT: Yes, sir. I think...

13 MR. STILLMAN: Never made any representation that  
14 that was the case.

15 THE COURT: Yes, sir. We don't need to argue any further.  
16 The objection is overruled. Do you want to pursue it, Mr.  
17 Stillman.  
18

19 MR. STILLMAN: No, sir.

20 THE COURT: All right. Any further...

21 MR. JOHNSTON: No, sir.

22 THE COURT: All right. Have you all got the instruc-  
23 tions?

24 MR. STILLMAN: Judge, we have a brief matter we would

1 like to take up and maybe we can take up the instructions and  
2 everything else at the same time.

3 THE COURT: All right, gentlemen, why don't you all  
4 retire and we will take the matter up that Mr. Stillman has  
5 so if you all will just retire to the jury room.

6 WHEREUPON, counsel proceeded to argue a motion to strike  
7 the evidence out of the hearing of the commissioners.

8 THE COURT: All right, Mr. Stillman.

9 MR. STILLMAN: Your Honor, at this time we would move  
10 to strike the testimony of Mr. Ritter as it related to damages,  
11 first of all because he never occasioned to relate that damage  
12 figure to a diminution in market value before and after the  
13 take, the diminution in market value as a realty. His testimony  
14 was repeatedly that I damaged the property X amount of dollars  
15 but he never testified that that damage figure represents  
16 what he considered to be the diminution in market value before  
17 and after the acquisition of the easement which is precisely  
18 the language required by the Case of Appalachia Electric and  
19 Power Company at 191 Virginia 344, 1950. That definition  
20 which is in there is that the damage it represents is the  
21 difference between the fair market value of the residue immedi-  
22 ately before the taking and the fair market value of the residue  
23  
24

1 immediately after the taking considering the nature of the  
2 taking and the facilities to be erected...erected thereon. He  
3 simply testified that in my judgment...once again using the  
4 term judgment call several times...the property has been  
5 damaged but he never has represented that that figure was in...  
6 in fact what he considered to be a diminution in market value.  
7 Secondly, in so far as Mr. Ritter's testimony is concerned  
8 about the...the actual valuation of the property I never heard  
9 Mr. Ritter use one comparable throughout his entire testimony.  
10 He simply referred to his experience in...in market sales but  
11 I simply don't think that is sufficient. It is virtually  
12 impossible to base any judgment as to whether Mr. Ritter was  
13 competent to evaluate property unless he has actually referred  
14 to specific comparable sales and so unless...in his  
15 direct examination he never used any to my recollection.  
16

17 THE COURT: All right, Mr. Johnston.  
18

19 MR. JOHNSTON: Answering the first point. At least  
20 twice he testified as to what his opinion was of the...of the  
21 fair market value of the remaining property outside the take  
22 before and after the take. Those figures are the Three Hundred  
23 and Fifty-nine Thousand One Hundred and Ninety-six Dollars  
24 (\$359,196.00) before and One Hundred and Forty Thousand One



1 Hundred and Fifty (\$140,150.00) later and then he at...on at  
2 least one occasion said that the difference between that is the  
3 damage of Two Hundred and Nineteen Thousand Forty-six  
4 (\$219,046.00). And answering the second point the witness  
5 while I think it is true that he wasn't...wasn't called upon  
6 either in direct or cross to discuss specific comparables he  
7 stated that his value judgments were based on his knowledge  
8 of the market and of sales during the period in question. I  
9 think it is a matter of cross examination.  
10

11 THE COURT: All right. Anything further?

12 MR. STILLMAN: No, sir.

13 THE COURT: I deny your motion. I...according to my  
14 notes he...he had the before and after values and I think the  
15 question of whether he used comparables is a question for  
16 examination in the case and so...  
17

18 MR. STILLMAN: Okay. Your Honor, I have one other  
19 matter I would like to argue. Mr. Ritter testified at length  
20 on a number of occasions that in his judgment the...I believe  
21 it was the southern portion of the land was landlocked...land-  
22 locked. I would suggest that unless the landowner is willing  
23 to enter in to a stipulation at this time that he is never going  
24 to be able to cross that easement that that...that these

1 commissioners be instructed that that land isn't landlocked  
2 so unless he wants to give us that assurance that he is never  
3 going to be crossing under that easement, unless he is willing  
4 to represent to the power company and to everybody else that  
5 he is never going to have occasion to cross under that easement  
6 because in his view he has no permission to do so then I would...  
7 I would suggest that the commissioners be instructed that that  
8 land isn't landlocked.  
9

10 THE COURT: All right. Mr. Johnston.

11 MR. JOHNSTON: Well that is an interesting thing  
12 that...that counsel would make that motion at this time. We  
13 tried by demurrer to establish that fact at the pretrial and  
14 wanted...and he objected and was overruled.

15 MR. STILLMAN: I objected?

16 MR. JOHNSTON: And the effect of it now is to change  
17 the...the language of the petition which he has always had  
18 control over. I submit and our case is based on the assumption  
19 that the...that is...that is precisely what his petition says  
20 at this time.  
21

22 MR. STILLMAN: Your Honor, that is fine, as long as  
23 the landowner is willing for me to institute a final order in  
24 this case which indicates that he has no permission under any

1 circumstances to cross that power line that is fine with me.

2 MR. JOHNSTON: You...you have got no right to do it  
3 in that language. You have chosen your language in the petition.

4 MR. STILLMAN: I have got a right to draft a final  
5 order consistent with what you say is in the petition. If  
6 you say the petition says that then I have got a right to draft  
7 a final order that way. You have made that argument. I think  
8 you are bound by it.

10 THE COURT: The motion is denied. I think the petition  
11 sets forth what may be used and I think that counsel can argue as  
12 they wish as to the credibility of the opinions.

13 MR. KUYKENDALL: Your Honor please, I would move the  
14 Court that the Court instruct the commission that that land  
15 isn't landlocked.

16 MR. STILLMAN: It is...it is awfully misleading.

18 MR. KUYKENDALL: Regardless...regardless of whether  
19 it was...

20 MR. JOHNSTON: It...it...it is no more misleading  
21 than that the petitioner has chosen to call the rights that are  
22 acquired in this proceeding an easement. It...it is a precise  
23 analogy.

24 MR. STILLMAN: I submit to the Court that it is an

1 easement.

2 MR. JOHNSTON: He...he...well...well he...he is...

3 THE COURT: Well from a...from a practical standpoint  
4 is...is this not an easement they are acquiring?

5 MR. JOHNSTON: Well from a...from a practical stand-  
6 point is...it is fee simple. They can do whatever is desirable  
7 and they can do...and...and they leave to us only such things  
8 as...as don't interfere with what they find desirable so I say  
9 we have no rights by their definition and I am...to call this  
10 residue landlocked is precisely the same sort of reasoning that..  
11 that gets you in to calling that an easement.

12 MR. STILLMAN: If Mr. Johnston says they have no  
13 rights then he should have no objection to me putting that  
14 in to the final order in this case.

15 MR. JOHNSTON: You...I...I...

16 MR. STILLMAN. He wants his cake and eat it, too,  
17 Judge. He wants the commission to think they are landlocked  
18 but he wants to have the benefit of going over there whenever  
19 he wants to.

20 THE COURT: I think it can be clarified by argument  
21 of the counsel. It is set forth articulately and particularly  
22 in this petition.

1 MR. JOHNSTON: Thank you, sir.

2 MR. STILLMAN: We take exception to the Court's ruling.

3 THE COURT: Exception. All right.

4 WHEREUPON, the commissioners were brought back in to  
5 the courtroom to hear the instructions and final argument.

6 THE COURT: All right. Counsel ready?

7 MR. JOHNSTON: Yes, sir.

8 THE COURT: Now, gentlemen, as you...those of you who ha  
9 served before know that there are written instructions which  
10 set forth the law of the case and then you apply the law to  
11 the facts which you have heard from the witness chair and from  
12 your view of the property in arriving at your award. I just  
13 call this to your attention specifically, Mr. Baldwin, because  
14 I don't believe you have served on one of these before but here  
15 are the instructions of the Court and you will have them with  
16 you when you retire to consider your award.

17 All right, Mr. Stillman.

18 CLOSING ARGUMENTS

19 MR. STILLMAN: Gentlemen of the Commission, in closing  
20 I will promise to be very brief. I simply want to remind you  
21 about two (2) very specific aspects of Mr. Ritter's testimony.  
22 As you may recall, Mr. Ritter was called on behalf of...of the

landowner in this case to testify what he considered to be the fair market value of the property as well as any damages which were caused as a result of the acquisition of the easement in question. Two (2) things occurred to me when I listened to his testimony and I would like for you to bear those in mind. First, Mr. Ritter made a great deal to do upon his direct and cross examination that the uppermost portion of this area was in fact landlocked. And for that reason he considered that this area of the property to be severely damaged. However when pressed upon cross examination he conceded that well just maybe the landowner might be able to acquire an easement to...or permission he said to cross the easement in question to get to the other side of his property. I think it is important for you to know the exact language in the petition and what it says and so I am going to read it to you now. It says 'the owners their successors and assigns may use the right of way for any purpose not inconsistent with the rights herein sought to be condemned included but not limited to the right to construct, operate, and maintain pathways, roads and streets, railroad tracks, ditches, water and sewer, telephone, electric, or other utility lines across the right of way in such a manner that the angle between the center line thereof and the center

1 line of the right of way shouldn't be less than forty-five  
2 (45) degrees provided that such use doesn't interfere with...  
3 now Mr. Johnston is going to be emphasizing this so I want to  
4 make sure I read this to you... 'provided that such use doesn't  
5 interfere with or endanger the construction, operation, or  
6 maintenance of the company's facility'. Now obviously that  
7 provision is in there because obviously it isn't going to do  
8 the power company one iota of good to acquire an easement for  
9 the construction of a transmission line and then allow the  
10 land owner or anyone to construct a roadway which interferes  
11 with the operation of that line. And that is clear to the case  
12 and I am sure you understand that that is part of the thing  
13 that you are compensating the landowner for today. Notwith-  
14 standing that fact though it does allow the landowner to cross  
15 the line so long as he doesn't go at it any more than a forty-  
16 five (45) degree angle from the center line and I think there  
17 is no question, I think you can make up your own mind as to  
18 whether or not at any point along that given line whether or  
19 not the landowner is going to be able to cross it.

22 The second thing that comes in to my mind about Mr. Ritter's  
23 testimony was that he was asked by Mr. Kuykendall on cross  
24 examination whether he had made any studies to determine the  
effect of transmission line easements on sub developed

1 property and their marketability and their inability to be sold  
2 quickly. Mr. Ritter testified I believe that he was aware of  
3 one instance in which a power line and he didn't specify as  
4 to what kind of power line or whether it was one like this  
5 one...it might have been bigger for all I know. He didn't  
6 specify as to what kind it was. He was aware of one in which  
7 it went on and it was adjacent to some property and the property  
8 didn't sell immediately so therefore he assumed that because  
9 of that one instance that wherever you put a power line immedi-  
10 ately adjacent to sub developed property...and this is his  
11 testimony and I will stand by this...you...you have your own  
12 recollection as to what he said...he testified that wherever  
13 you put a power line immediately adjacent to sub developed  
14 properties those lots are always the last ones to sell. He  
15 said always and he said wherever. Well notwithstanding that  
16 fact in rebuttal we put Mr. Humphrey on the stand and we asked  
17 him did you make any studies, did you make any determination  
18 as to the effect of...of transmission lines on the ability to  
19 sub develop property. He has. He was prepared. He had in  
20 fact examined some and he in fact determined that in...in the  
21 particular sub development to which he referred some examples  
22 of property that were immediately adjacent to power line easeme



1 sold before others so I submit to you that that effectively  
2 destroys any credibility as far as Mr. Ritter's testimony  
3 about the fact that as soon as you put that power line in there  
4 you disrupt the availability of the landowner to subdevelop  
5 that property. That just isn't true and I think you know that  
6 now. Secondly we asked him on cross examination or Mr. Kuykendal  
7 did is don't you think a study like that would be important.  
8 if you are going to come in here and tell you gentlemen that  
9 once you put the power line easement in you are effectively  
10 undermining the landowner's efforts to sub develop the property.  
11 And don't you think it is important to make an effort to determin  
12 that that is true. Don't you think it is important for you to  
13 go out and look at sub developments that have power line ease-  
14 ments adjacent to them and make a determination if in fact that  
15 is the case. He answered by well that is...by the statement...  
16 and I think this is my recollection of what he said...but by  
17 saying that that is a judgment call. And he never really  
18 answered the question but it is clear that he hadn't made such  
19 a study and it is clear I think to you that such a study is  
20 almost invaluable because without that how can you possibly  
21 come in here and say that I don't care where the house is,  
22 whether it is down here...or the lot is...whether it is down

1 here or up here it is damaged as long as you can see the power  
2 line. I submit to you Mr. Humphrey's testimony proves other-  
3 wise. And I submit to you that people buy property immediately  
4 adjacent to power lines and that to make a statement that once  
5 you do that you effectively undermine the sub development with-  
6 out making any studies to confirm that is irresponsible. I  
7 think that you in making your own determination as to the  
8 credibility of Mr. Ritter's testimony will reach that same  
9 conclusion. Thank you.

11 MR. JOHNSTON: May it please the Court.

12 THE COURT: Mr. Johnston.

13 MR. JOHNSTON: Mr. Stillman. Mr. Kuykendall.

14 Gentlemen, it is...it is my responsibility now to summarize  
15 as best I can the evidence that you have heard on behalf of  
16 Doctor and Mrs. Lado. I do appreciate your attention and I  
17 will do this as quickly as I can responsibly do it. It is  
18 interesting that both of the appraisers that you have heard  
19 today have testified that the highest and best use of this  
20 property is related to its development in to subdivision. As  
21 I recall what Mr. Humphrey said he said that this was invest-  
22 ment property to be held until it is subdivided. Mr. Ritter  
23 said that he thought that the highest potentiality of it at  
24

1 this time was for residential development along the five (5)  
2 acre tract route. Let me point out to you that in the appraisal  
3 of the property it was Mr. Humphrey's judgment that it has a  
4 present value of Four Hundred and Fifty Thousand Dollars  
5 (\$450,000.00). Mr. Ritter valued it at Three Hundred and  
6 Seventy-three Thousand Five Hundred Dollars (\$373,500.00). The  
7 land value estimate by Mr. Humphrey was One Thousand Dollars  
8 (\$1,000.00) an acre. By Mr. Ritter it was Eight Hundred  
9 Dollars (\$800.00) an acre. And therefore the value of the  
10 taking in the judgment of Mr. Ritter was some almost Two  
11 Thousand Dollars (\$2,000.00) less than that according to Mr.  
12 Humphrey. Mr. Ritter testified it was Fourteen Thousand  
13 Three Hundred and Four Dollars (\$14,304.00) and he said that  
14 that was his judgment of what one hundred (100) per cent of  
15 the fee simple value was at Eight Hundred Dollars (\$800.00)  
16 an acre. In other words, he was saying that the taking of  
17 this easement had the effect of acquiring all of the value  
18 there was in those 17.88 acres and Mr. Humphrey said that  
19 at One Thousand Dollars (\$1,000.00) an acre he thought that  
20 what you had acquired of it was about ninety (90) per cent  
21 of the value of the property at One Thousand Dollars (\$1,000.00)  
22 and that is why his figure came to Sixteen Thousand and Ninety-tw

1 (\$16,092.00). You heard their testimony and you know what  
2 their experience is and background and I will leave you to judge  
3 that upon your own without taking further time to comment on  
4 the value of the taking. The enormous difference in the  
5 gentlemen is...in their valuation...is in the damage to the  
6 residue.

7  
8 Now under the...under the instructions...first let me  
9 say, Mr. Baldwin, I would ask you, sir, if you would look at  
10 Instruction 1C which gives the basic charge to the commission  
11 which is to return two (2) items of money. Number One, what  
12 is that seventeen eight...point eight eight acre strip worth,  
13 acreage strip worth, and, secondly, what is the diminution in  
14 value of the entire remaining property by reason of the effect  
15 of that on the...on the...on the balance of it. In other  
16 words, you must value...value the property before the power  
17 line is put in there and then afterwards and it is the difference  
18 in that value that amounts...that is the damage and that is...  
19 that is the second piece of money to which the landowner is  
20 entitled. Is it hurt? Well both witnesses concede it is.  
21 How is it hurt? That is where they are in some disagreement  
22 at least to the measure of it. Now first examining what Mr.  
23 Ritter...what Mr. Humphrey has said about it; gentlemen, is there  
24

1 any sense to going in there and saying that here is a one  
2 hundred and fifty (150) acre strip of taking and I am going to  
3 measure the effect of the...to...rest of the taking within  
4 one hundred and fifty (150) feet on either side. Now he sat  
5 there and said it but I ask you is there any sense to it? It  
6 occurs to me that possibly it...it might make sense in some...  
7 in some situations but why on earth would you do it here?  
8 Would it...could it be reasonably said first of all that the  
9 effect of this thing expires in one hundred and fifty (150)  
10 feet? Well I...I submit to you that that is...that is too  
11 wrong to...to even debate, that the effect on that of that  
12 line is...is on the community out there so far as the highest  
13 and best use of land which is to be devoted for...to subdivision  
14 purpose. It was investment to hold to subdivide said Mr.  
15 Humphrey. I submit to you gentlemen that by putting that  
16 there he has stretched the hold period in a real and important  
17 way and if you buy a piece of land and you have got to...just  
18 common sense tells you if you have got to hold it three (3)  
19 or four (4) or five (5) years to develop it then that is one  
20 thing, but if you have suddenly got some different conditions  
21 that is going to postpone that another five (5), ten (10), or  
22 fifteen (15) years that is an entirely different thing. That...

1 that affects the whole formula of subdivision cost, what you  
2 can afford to put in to your raw land value, because that raw  
3 land value has got to be carried and carried and carried  
4 through times of high interest and low interest and middle  
5 interest; low interest if we are ever going to have it again.  
6 But that is...that is the real effect that we are talking about  
7 and so what sense is there in saying that the effect is limited  
8 to one hundred and fifty (150) feet? I submit there is none.  
9 But let's look at what Mr. Ritter said. He said on the northern  
10 remainder, in other words down toward the road, the...the effect  
11 is esthetic and I submit to you...these are my words now but  
12 I think I am fairly summarizing what he was saying to you...  
13 this is what the market is going to say about that because  
14 it is...we are being overhung by this right in favor of the  
15 power company. The northern remainder, same problem, except  
16 another one. The northern one, he says it is landlocked and  
17 let me talk about that for a minute because I think that is  
18 the most serious question in the case. I may be repeating  
19 some of the evidence here but I do want to...to make sure that  
20 our position in this is perfectly clear. In this proceeding  
21 there is acquired by a statutory process that begins with this  
22 petition a definition of what the power company expects to  
23  
24

1 obtain in this case. They have certain rights to take it.  
2 What the landowner is left with is only the right to be paid  
3 for it. He can't say well you can't take it or move it over  
4 here or move it over there. The legislature has given to the  
5 power company the right it needs to serve the public in this  
6 way. If the power company came here and I want to emphasize  
7 now that they didn't come here to acquire the right for a power  
8 line as they could have and what I am about to say to you and  
9 I ask you to judge in light of whether they will ever again  
10 need to come to this landowner to do anything further within  
11 that one hundred and fifty (150) foot strip as long as it is  
12 for an electric transmission system as long as the towers are  
13 not more than one hundred and fifty (150) feet wide...high.  
14 Those are the only limitations. First of all in Paragraph  
15 Four a description of the work or improvements. Now here is  
16 what they have got the right to improve for...for this 17.88  
17 acre strip of land. You have a complete description. A  
18 description of the work or improvements to be made upon the  
19 easement of right of way described herein is the construction  
20 operation, and maintenance of one or more lines, of poles,  
21 towers, or structures together with all wires, attachments,  
22 equipment, accessories, and appurtenances desirable in  
23  
24

1 connection therewith. Now...unquote. The limitation on their  
2 discretion is desirable. That is a subjective judgment on  
3 their part. Whatever they desire to put in there. So Doctor  
4 Lado can't come back and say well you don't need that. You  
5 see, they have acquired the right here. They come in and they  
6 say, Your Honor, we acquired the right in 1977 to put whatever  
7 we thought desirable meeting this definition. Further on in  
8 describing the estate interest or right sought to be acquired,  
9 they say it is the perpetual right, privilege, and easement of  
10 right of way hereinafter...hereinabove and hereinafter more  
11 particularly described over, upon, and across the land described  
12 herein in Warren County, Virginia. Then, quote, the company  
13 shall have the right to inspect, rebuild, remove, repair, improve  
14 relocate such facilities on such right of way and make such  
15 changes, alterations, substitutions, additions to or extensions  
16 of its facilities as the company may from time to time deem  
17 advisable, unquote. Doctor Lado comes in and he says I don't  
18 think it is best to do that. They don't care what he thinks.  
19 Whatever they deem advisable. They substitute, change, alter  
20 add to; all that right is in this suit for whatever technology  
21 will tell them from here on out can go within that 17.88 acres,  
22 that mile long strip, as long as it is for power distribution



1 system and doesn't exceed one hundred and fifty (150) feet.  
2 They can put towers back to back. I submit that that gives  
3 them the right if they deem it advisable to fence it, to  
4 enclose it, and that if they in future years want to do that  
5 and they go to their counsel and say get us the right to do it  
6 he will say you got it in 1977. Now, gentlemen, our case to  
7 you is only that if that is so, and it is, then in 1977 they  
8 must pay for that right and it is in that sense that we point  
9 to the language that Mr. Stillman recited to you dealing with  
10 the rights of the landowner and I say to you there are no  
11 rights. It is...it requires a careful reading but a fair  
12 careful reading and all of these things 'the owners, their  
13 successors and assigns may use the right of way for any purpose  
14 not inconsistent with the rights herein sought to be condemned in  
15 cluding but not limited to the right to construct roadways...' and  
16 so forth and then the inventory of those things followed by the  
17 phrase 'provided that such use doesn't interfere with or  
18 endanger the construction, operation, and maintenance of the  
19 company's facilities'. That takes anything that is up until  
20 this point to be construed as a right and makes it a pure  
21 terminable licence or privilege. It will...the...these rights,  
22 these so-called rights, exist until Vepco says that they

1 interfere and then they are all over and that may be today or  
2 tomorrow or the next day and that is why perhaps I was making  
3 myself tedious during the course of the trial. I...I felt it  
4 my responsibility to point out in this record clearly that we  
5 are not talking about a power line. That is the usual case  
6 that...that is dealt with in this type of proceeding, come in  
7 and take a right for a power line. This is an all inclusive,  
8 pervasive right which is amount...which amounts to fee simple  
9 and if it takes away all the rights then certainly Mr. Ritter's  
10 judgment is a sound one who...when he describes that southern  
11 remainder as quote landlocked. That means without right of  
12 access. Now it is...if...Mr. Stillman has suggested to...to  
13 you that...that isn't it reasonable to think that he is going  
14 to be able to find a way to get across. Well isn't it tragic  
15 to think that he has now got to find a way because he has got  
16 no right. He has got no right. The right is acquired from  
17 him right here, and what I am saying to you is not a technical  
18 nicety of the law but a fact, a conclusion from the language  
19 that they chose to stick in this proceeding...in this petition  
20 so looking at the land south of the right of way, that is the  
21 one hundred and sixty-three (163) acres without right of access  
22 you go put that on the market and the...and the...the...the  
23 fellow in the market looks at it and he says well now, Mr.

1 Johnston, I can't go...I don't have the uncontrolled right to  
2 go across there. I have no road...public road frontage. Unless  
3 I can acquire a right from somebody else I have got no way to  
4 get in and out of that property. I am not going to pay you the  
5 kind of price that is warranted by a...a piece of land that  
6 has a highest and best use for subdivision purposes as both  
7 these witnesses say it does. I will pay you for something like  
8 timberland value, residue value, whatever it is that might...  
9 Two Hundred Dollars (\$200.00) an acre. Is that...is that a  
10 good...Thirty-two Thousand Dollars (\$32,000.00) that is for  
11 a piece of land without right of access, that one side says  
12 was worth One Hundred and Sixty-three Thousand (\$163,000.00)  
13 before the taking. The other side says it was worth about  
14 One Hundred and Forty Thousand (\$140,000.00). You see, there  
15 is the...there is the enormity of the problem here. These  
16 are big numbers. I know that. But it is a serious problem  
17 and I submit to you it is a fair assessment of what the  
18 measure of the damage is in the case. Now there is a lesser  
19 effect below the taking. When we get down to...to the land  
20 between 55 we have got no...and the taking...we have got no  
21 problem about access. It has got...it is supporting Route 55  
22 frontage and all it has got is the...the esthetic effect and

1 let me talk about that. Mr. Ritter tells you that in his  
2 experience and again I may misquote him but it will be unintentional. Your recollection of what he said is what controls.  
3  
4 In my experience said Mr. Ritter properties that about these  
5 properties...these...these type easements are the last ones  
6 that develop. Now Mr. Humphrey's so-called study was a very  
7 interesting thing to me. He goes and says...and takes a  
8 piece of land which he says developed out in nine (9) months.  
9  
10 Now are we to conclude from that that they sold out at the  
11 same price that a competing lot did that wasn't up against  
12 that right of way? That is contrary to the experience of  
13 common people. You can't make that kind of study in the  
14 abstract, and I submit to you that is the kind of appraisal  
15 he has made here is in the abstract. He has taken out of  
16 context the fact that it did sell. It...undoubtedly somebody  
17 wanted those bad enough to buy them. I will concede that, but  
18  
19 I will bet you every nickel I can get my hands on that they  
20 didn't sell for the same price that a similar lot did that  
21 was not under the influence of those power lines. That all  
22 has to be considered and I think in a...I would expect to find  
23 that in that study as in other studies of that kind that as  
24 they develop...you just think what the...what the fellow in

1 the market place is going to say who has got a choice of the  
2 thing or not the thing, the line or not the line.

3 Finally let me just say that...that in the overall effect  
4 of...of the property I suppose you could slice that property  
5 in half with a little bit more surgical precision but not much  
6 more. I doubt seriously if you could find a way to place that  
7 line so that it had a more serious adverse effect to the only  
8 improvements that were placed on it, the house, the lake, and  
9 you saw the house and where it is and you saw that line marked  
10 out behind it and I submit to you that the edge of that right  
11 of way is going to be something like twenty (20) or thirty  
12 (30) feet from the enclosed yard there of the house and that  
13 the right to put those one hundred and fifty (150) foot struc-  
14 tures, however many of them they want to put, is going to so  
15 dominate that house that it is esthetically going to take away  
16 whatever the esthetic consideration is of that property and I  
17 submit to you it wouldn't be there except for esthetics. The  
18 side of that mountain with that view, that is why it is there.  
19 And I submit to you that whatever is left is the pure habitation  
20 value of the property, and that it...and I...I would have to  
21 think that Mr. Humphrey was...was rather generous when he used  
22 the word probably. He said probably you wouldn't have put it  
23  
24

1 there if the line was already there. Now I think that is fair.  
2 Probably you wouldn't. But let me conclude by saying only  
3 this, that...that whatever the recreation value of that lake  
4 is, if the line is one hundred (100), two hundred (200) feet away  
5 from it, one hundred and fifty (150) feet up in the air, twice  
6 as high as those trees, dominating, whatever the effect is on  
7 that house and its value, whatever is the effect on that land,  
8 is the matter that is to be properly addressed in this proceeding  
9 and...and I submit to you that in...when Mr. Ritter evaluates  
10 that the whole property was worth just less than Three Hundred  
11 and Seventy-five Thousand Dollars (\$375,000.00) before the  
12 line goes in there and that the constituent parts have a worth  
13 of about One Hundred and Forty Thousand Dollars (\$140,000.00)  
14 when they are through, that his conclusion that the value of  
15 that property is adversely affected about...over Two Hundred  
16 Thousand Dollars (\$200,000.00) is a sound judgment, a sound  
17 judgment, of what the market would pay for it after those rights  
18 have been acquired and we ask that Doctor Lado and Mrs. Lado  
19 be compensated only that amount which fairly pays them for  
20 the loss of value they have had in this case by reason of the...  
21 the acquisition of these rights, not for quote a line, but for  
22 Vepco to acquire a carte blanche right to do whatever it wants

1 to within that strip for all eternity.

2 Thank you.

3 THE COURT: Mr. Kuykendall.

4 MR. KUYKENDALL: May it please the Court. Gentlemen  
5 of the Commission. We have gotten to that stage as you know  
6 now where the lawyers argue their case, review the evidence as  
7 they understand it in the light of the law that the Court has  
8 given you in these instructions and then you just make a determi-  
9 nation as to the fair compensation to be paid for the easement.

11 Fortunately in these cases the parties can come before  
12 you gentlemen assured as we all have the right to be that a  
13 fair and equitable judgment will be made not only to the pro-  
14 perty owner, and he has a right to be compensated fairly for  
15 the value of the easement that is being acquired and for  
16 damages to the residue, but also the power company who has the  
17 duty and responsibility to the public to make electric...  
18 electricity available throughout this country for everybody,  
19 for their own use, for their purposes, to make their value...  
21 their properties usable in value to them. They have got the  
22 duty under the law to acquire these rights of way and to build  
23 these lines in order to serve you and me and the rest of the  
24 people. Now it would be much nicer if...if the power companies

1 and the telephone companies and other public utilities, the  
2 state highway department, everybody who has the power to con-  
3 demn, if they didn't have to cross anybody's property but they  
4 have to do it. They are legally obligated to do it and they  
5 have got to provide these facilities so when they do that they  
6 come to court and you gentlemen who are responsible citizens  
7 have the duty and responsibility of deciding between the pro-  
8 perty owner and the condemnor of the property what is reasonable  
9 and what is fair under the facts that have been developed in the  
10 case and based upon those considerations then you make a judg-  
11 ment. Now it sounds good to hear Mr. Johnston, and I am very  
12 fond of Mr. Johnston. He and I try a lot of cases against  
13 each other and occasionally with each other...it is much more  
14 pleasant that way than the other...but we get along and  
15 it is nice to hear Mr. Johnston get up here and extoll all of  
16 the virtues of the landowner and his property and how terribly  
17 he is going to be hurt and to read a petition in a condemnation  
18 proceeding. My, what a horrible thing it is going to be.  
19 You gentlemen can read this petition. You can see what rights  
20 the property owner has and what rights the power company has  
21 and I will ask you to read it if you have got any doubt about  
22 it, but I submit that in determining whether or not this  
23  
24



1 easement...they are not acquiring the fee simple title to this  
2 property. They are acquiring a...merely an easement to build...  
3 to make...to put these structures up to make these facilities  
4 available to serve the public and I submit to you that in  
5 determining what is the fair compensation for the easement and  
6 what will adequately compensate the landowner for the loss of  
7 value to the residue you take the practical...the practical,  
8 sensible view of the problem as you see it daily and as you  
9 understand it and as you can gather from the evidence. Now  
10 what are the facts? You have got two (2) appraisals and you  
11 have been out there and looked at the property. Mr. Humphrey  
12 appraised this property and he tells you how he arrived at his  
13 value. He did the thing that I think is commendable certainly.  
14 It is in the approved method of appraisal. He came in here and  
15 picked out some sales in this community and he told you what  
16 those properties sold for and based upon that he made a judgment  
17 as to the value of this property and the value of the take.  
18 He was a little higher on the take than was Mr. Ritter. As  
19 a matter of fact as I recall it Mr. Humphrey testified that  
20 the value of the take was Sixteen Thousand and Ninety-two  
21 Dollars (\$16,092.00) whereas Mr. Ritter said it was Fourteen  
22 Thousand Three Hundred and Four Dollars (\$14,304.00). Mr.

1 Humphrey put a higher value on the...a higher total value on  
2 the...all of this four hundred (400) acres of land than did Mr  
3 Ritter. So I think you start out, gentlemen, realizing that  
4 Mr. Humphrey has made a fair attempt to assign to this property  
5 the fair market value based upon an examination of the sales  
6 of other properties in this county. He then tells you that based  
7 on his experience and he gave...related an instance where  
8 towers of the character that Mr. Johnston was describing and  
9 is described in this petition have been built over property.  
10 He says that in his opinion based on his long years of experi-  
11 ence in appraising properties not only for condemnors, power  
12 companies, highway departments, and others, but also for pro-  
13 perty owners who have been claiming increased values in damages  
14 to the residues. He has been on both sides of the picture.  
15 And he tells you that having made those studies that in his  
16 opinion...and you have to decide whether you have any confidence  
17 in his judgment in this matter or whether you believe Mr. Ritter'  
18 judgment is better...but he tells you that based upon his judg-  
19 ment and his experience and what he has found out in the market  
20 that these lines in this type of construction described in  
21 this petition will not destroy the entire property, a four  
22 hundred (400) acre tract of land. He tells you that the market

1 value of that land is going to remain about the same except  
2 an area of One Hundred and Seventy-five (175) feet on each  
3 side of the center...on each side of this...of the outside of  
4 this right of way and that was the experience that he had had  
5 and based upon that judgment he gave you an...his damage value.  
6 He told you that in his opinion the dwelling had been damaged  
7 Twelve Thousand One Hundred and Fifty-three Dollars (\$12,153.00)  
8 and that the land had been damaged Twenty-six Thousand Nine  
9 Hundred and Eighty-five Dollars (\$26,985.00) for a total damage  
10 of Thirty-nine Thousand One Hundred and Thirty-eight Dollars  
11 (\$39,138.00). You add that to the Fourteen...to the Sixteen  
12 Thousand Ninety-two Dollars (\$16,092.00) for the easement for  
13 a total of Fifty-five Thousand Two Hundred and Thirty Dollars  
14 (\$55,230.00). Now Mr. Ritter on the other hand didn't refer  
15 to any comparable sales in determining his value. He just  
16 got up here and said it is worth so much an acre in my opinion  
17 and that is a fact. He tells you that in his opinion the land,  
18 all of that land that lays to the north of this right of way,  
19 has been damaged, the whole business, regardless of how close  
20 it is to the line and I thought it was a right noticeable  
21 remark when they seek...to my viewpoint at least from Mr.  
22 Johnston when he said that these lines affect the community.  
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1 Anything that is within the sight of this line has been damaged,  
2 has been hurt. It doesn't make any difference if it is three  
3 (3) miles away if I interpreted his argument correctly so the  
4 man who lays on the other side of Mr. Lado, Doctor Lado,  
5 his land he is saying has been damaged. Everything has been  
6 damaged that is within sight. Well the fellow who owns the  
7 land next to him can't be compensated because they didn't  
8 take any of his land and I submit to you that when I asked  
9 Mr. Ritter, 'Mr. Ritter, would you advise Doctor Lado to sell  
10 his land on the south side...on the north side of this property  
11 for the price you are putting on it after this line is built'  
12 and he said, 'well that is a judgment that Doctor Lado is  
13 making'. I said, 'That isn't what I am asking you. I am asking  
14 you would you advise him to sell it for that?' And he equivo-  
15 cated. He didn't want to answer the question. He knows very  
16 well that he wouldn't advise him to sell that property for that  
17 value. It has got more value. And upon...upon being pressed  
18 on cross examination I said, 'Doctor...Mr. Ritter, do you mean  
19 to tell this commission that land that lays three hundred (300)  
20 feet from that line is worth no more than land that lays one  
21 hundred (100) or fifty (50) feet from it and he wouldn't answer  
22 and then he finally admitted after being pressed, 'Well,' he

1 said, 'I will admit the land that is down there next to the  
2 highway is worth more', and yet he tells you that without any  
3 attempt to say at what distance one must get from that line  
4 in order to effect a substantial diminution in market value,  
5 he equivocated and wouldn't answer. Now if we operate on the  
6 theory that Mr. Johnston would have you accept that whenever  
7 one of these lines in one of these power developments goes  
8 through a piece of country it damages everything in sight.  
9 It ruins the country according to that. I submit to you that  
10 if you can't buy that argument then there is an area of this  
11 land that Doctor Lado owns that hasn't been damaged. Mr.  
12 Humphrey's analysis of this is a scientific, supportable way  
13 of going...determining the damage to the residue. Now the  
14 power company has to pay for this. It has to acquire it and  
15 it is going to pay for it and all the company asks is that you  
16 use your good judgment and your reasonable...your good sense  
17 about evaluating this. I submit to you that under the petition  
18 that has been filed in this case of the authority for the  
19 acquisition of this right of way that this property owner and  
20 his successors in title do have the right to cross that right  
21 of way and to use it and he tells you that this land that lays  
22 to the south side of this right of way has been reduced if I  
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1 recall it to Two Hundred Dollars (\$200.00) an acre because it  
2 is landlocked. Landlocked? That property isn't landlocked  
3 and I submit when you go out and you try to put a value on  
4 this property after this take, say to yourselves, do you  
5 think he is going to be content to say I will never cross that  
6 right of way because I know I can't get across or I haven't  
7 any right to or is he going to a court and say, 'Look-a-here,  
8 I have been afforded by this petition the right to cross and  
9 recross this right of way in this,' and I submit to you that the  
10 Court is going to say that you couldn't...you can't put idle  
11 words in to the petition and I will determine whether you have  
12 got a right. You can cross it.

14 Now, gentlemen, I submit that the damage value that has  
15 been placed on this property by Mr. Ritter is a shocking state-  
16 ment. He tells you that the damage to this total property is  
17 Two Hundred and Nineteen Thousand and Forty-six Dollars  
18 (\$219,046.00) by the acquisition of an easement and...and the  
19 construction of this...of this line. Now I will submit further  
20 that if that is the theory upon which they would rest upon,  
21 maybe the power company ought to go out and buy everybody's  
22 property and just own it, be through with it, but I earnestly  
23 submit and I am going to close with this remark and this is all  
24

1 we ask, I know nobody wants a power line across their property.  
2 They don't want a state highway. They don't want a telephone  
3 company line. They don't want a gas line running through.  
4 Nobody wants that. They don't go out and ask for it and when  
5 you take it you have got to pay for it, pay what is reasonable  
6 and fair, and that is all we are asking. And the power company  
7 is in the unenviable position of being a big corporation that  
8 has got to acquire these rights. And it...it ought to be  
9 treated fairly. It ought not to have to pay more than is  
10 reasonable for this property. Now you gentlemen have heard  
11 this evidence and I close by the statement that Mr. Humphrey's  
12 analysis and his detailed treatment of this whole problem  
13 shows that he is a man of exceptional experience and ability  
14 in this area. He is not in the pay of the big corporate con-  
15 demnor. He represents property owners as well as condemnors  
16 and he tells you that this is his honest judgment and I think  
17 that the proof of the pudding is the eating when he gave more  
18 for the take than did Mr. Ritter. And he isn't disposed to try  
19 to whittle down and to keep low the award in these cases. He  
20 is here to tell you what he honestly believes under his own  
21 reasonable and proper evaluations. All I ask and I conclude  
22 with the remark that you do what is fair to both and we will  
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1 all be satisfied but it is a responsibility that you have and  
2 it is a question of judgment on your part but I do believe  
3 that the evidence of Mr. Humphrey is entitled to great weight  
4 and I submit when Mr. Ritter says when you pin him down on  
5 cross examination as to how he gets at these things from  
6 experience his only answer is it is just a matter of judgment.  
7 And I submit that it is more than that from an expert...an  
8 expert appraiser. When an expert appraiser can't demonstrate  
9 and prove his methods of appraisal and the way he arrives at  
10 his figures to say it is just a matter of judgment and  
11 experience, you can use your own.  
12

13 Thank you very much for your attention and for your  
14 consideration.

15 THE COURT: Gentlemen, as you know you can remain  
16 and fix your award. You can do whatever you wish. Just when  
17 you have completed it leave it with Mr. Mathews downstairs in  
18 the Clerk's Office. Also remember that the award doesn't have  
19 to be unanimous. If any three (3) of your number agree on the  
20 award that constitutes the action of the commission. The others,  
21 the minority, may file a separate report if they wish or they  
22 don't have to but the majority rules as far as you all are  
23 concerned so you will now retire and consider your award. You  
24



1 all may follow the Sheriff out to the jury room.

2 Anything further, gentlemen?

3 MR. STILLMAN: No.

4 MR. JOHNSTON: No.

5 THE COURT: All right. We will now adjourn.  
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