September 12, 2022

Ms. Shannon Estenoz
Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior
Washington, DC 20240

Subject: NAO-2012-00080, Surry-Skiffes Creek-Whealton Project, James River Transmission Line

Dear Assistant Secretary Estenoz:

We are writing to you on behalf of the Coalition to Protect America’s National Parks, Cultural Heritage Partners, Duke Environmental Law and Policy Clinic, National Parks Conservation Association, National Trust for Historic Preservation, and Preservation Virginia. In January 2022, we copied you on a letter to National Park Service (NPS) Director Charles Sams regarding Dominion Energy’s Surry-Skiffes Creek-Whealton 500kV transmission line project across the James River near Jamestown, Virginia. A copy of that letter is attached. In the letter, we provided a thorough summary of the project’s history; and encouraged the NPS to consider filing a pre-decisional referral to the Council on Environmental Quality (CEQ), in accordance with 40 CFR Part 1504. Such a referral must be filed no later than 25 days after the U.S. Army Corps of Engineers (Corps), the lead federal agency, issues the Final Environmental Impact Statement (FEIS) for the project. The federal permitting dashboard currently estimates that the FEIS will be released on September 16, 2022. However, Army Corps officials have indicated that this date is expected to be delayed by two months, to November 18.

To be brief here, the Corps authorized the project to be built in 2017 based on an Environmental Assessment (EA) that the U.S. Court of Appeals for the D.C. Circuit subsequently found to be legally deficient. National Parks Conservation Ass’n v. Semonite, 916 F.3d 1075 (D.C. Cir. 2019). The Court ordered the Corps to prepare an EIS and the Corps issued a Draft EIS (DEIS) in November 2020 that proposed no additional or meaningful resource protection measures related to the already constructed project. While the DEIS considered “28 alternatives” and “one conceptual alternative,” none of them included the eventual replacement and removal of the existing transmission line. In essence, the transmission line will be a “permanent” intrusion on the landscape adjacent to two units of the National Park System and numerous historic properties. As such, the impacts constitute an impairment of national park resources and values, as well as long-term adverse effects to the various historic properties.

Not surprisingly, in the DEIS the Corps identified the already-constructed transmission line as its Preferred Alternative and repeated many of the serious environmental analysis flaws from the debunked EA. Thus, it appears highly likely that the FEIS will “re-approve” the already-constructed transmission line without an objective consideration of alternatives, and without making any meaningful changes that would significantly reduce the well-documented adverse impacts of the project on Colonial National Historical Park and the Captain John Smith Chesapeake National Historic Trail, two units of the National Park System, as well as numerous other historic properties within the project area. In addition to harm to historic resources, impacts to the Indigenous Cultural

1 The Court of Appeals’ initial ruling also vacated the Clean Water Act Section 404 permit. However, Dominion and the Corps moved the Court to reconsider its order based on the fact that Dominion had already completed the project and energized the transmission line, a fact they had previously failed to share with the Court. The Court then amended its order and remanded the decision on vacatur to the District Court, which declined to vacate the permit due to the economic consequences doing so would have on the community.
Landscape and to the federally-endangered Atlantic sturgeon were not properly assessed or addressed in the DEIS.

The Corps has recently indicated it plans to release its FEIS on or about November 18, 2022. Given the significant and substantive disputes among agencies and the deficiencies in the process and analysis to date, a Section 106 consultation must be reinitiated, tribes must be brought into a meaningful consultation process, and the current Memorandum of Agreement must be reopened. Additionally, the Corps must give serious consideration to available alternatives and, relatedly, revisit its analysis under the Clean Water Act to comply with the statute’s mandate to select the least environmentally damaging practicable alternative. This is precisely what the U.S. Court of Appeals for the D. C. Circuit mandated.

We are writing to you now to urge the NPS and the Department to do two things in addition to our requests above that are related to this project, pending release of the Corps’ FEIS:

1. We urge NPS and the Department to use the remaining time available in the planning process (i.e., between now and the release of the FEIS) to actively advocate for the Corps to add a modification to its Preferred Alternative that would provide for a “date certain” decommissioning and removal of the existing transmission line (i.e., a sunset date) that was constructed under the auspices of the legally deficient EA. Specifically, we recommend that NPS and the Department request the following provisions be added to the Preferred Alternative:

   • The existing transmission line shall be decommissioned; replaced, as needed, at a different location; and removed no later than (NLT) 20 years after the issuance date of the Corps’ Record of Decision (ROD) for the project.
   • In order to assure compliance with the above requirement, Dominion Energy and the Corps must formally initiate planning to decommission, replace and relocate, and remove the existing transmission line NLT 20 years after the issuance date of the Corps’ ROD for the project.

2. In the event that the Corps declines to include the above provisions in a modified version of its Preferred Alternative in the pending FEIS, we urge NPS and the Department to be prepared to file a pre-decisional referral with CEQ in accordance with the procedures set forth in 40 CFR Part 1504. The referral must be filed within 25 days after the issuance of the FEIS. The interagency disagreement regarding date-certain replacement and removal of the existing transmission line would serve, in part, as the basis for the referral. CEQ’s review is imperative, as the very concept of conducting an objective consideration of alternatives when the project is already built is inherently biased.

We realize that the Corps may be reluctant to retroactively consider establishing a sunset date on a project that has already been constructed. However, it would have been reasonable and appropriate for the Corps to have considered a 20-to-30 year sunset date for the proposed project as part of thorough environmental analysis had it prepared one prior to allowing the transmission line to be constructed under a legally deficient EA. In NPCA vs. Semonite, the DC Circuit ordered the Corps to prepare an EIS, stating that “the Corps will have to revisit its theories about alternatives under NEPA, which in turn will require it to reevaluate its Clean Water Act analyses.”

Moving forward, establishing a sunset date is critically important because the project is having and will continue to have major long-term, essentially permanent, adverse impacts on the affected properties. As a practical matter, there are no effective mitigation measures that can significantly reduce or eliminate those impacts. The only effective method to eventually reduce the extent of these impacts is to ensure the removal of the transmission line after a reasonable period of use by Dominion Energy. If the Corps
disagrees to the proposal to establish a “date certain” for removal of the transmission line, then CEQ would be the most appropriate arbiter of the interagency disagreement.

We close by saying that, at this point in the planning process, a cooperating or consulting agency, such as the NPS or the Department, can most effectively advocate for the above provisions to be added to the Corps’ Preferred Alternative. And only a federal agency, such as the NPS or the Department, can file a pre-decisional referral that, in effect, requests that CEQ attempt to resolve the interagency disagreement about the project, including the lack of a date certain for removal.

If no action is taken, the likely outcome of this project is permanent impairment of park resources and values and long-term adverse effects to multiple historic properties, opening the door to further degradation of the resources. The window of opportunity for affecting meaningful change in the likely outcome is closing quickly. We therefore urge NPS and the Department to act quickly and decisively to ensure that the resources and values under your stewardship are ultimately conserved unimpaired for the enjoyment of future generations.

Respectfully submitted,

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Stepan Nevshehirlian, Carrie Traver, U.S. Environmental Protection Agency
Mark Warner, Tim Kaine, United States Senate
Rob Wittman, U.S. House of Representatives
Julie Langan, Roger Kirchen, Virginia Department of Historic Resources

Attachment (January 19, 2022 letter)