RECEIVED
Apr 15 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III
Administrative Law Judge

Appellate Case No. 2023-001351

Blue Ridge Environmental Defense League, Petitioner,

v.

South Carolina Department of Health and Environmental Control and Dominion Energy, Respondents.

PETITION FOR WRIT OF SUPERSEDEAS

Pursuant to Rule 241, SCACR, and authority granted by Orders of the South Carolina Court of Appeals, entered January 10, 2024, Exhibit A, and April 3, 2024, Exhibit B, Appellant Blue Ridge Environmental Defense League ("BREDL") hereby respectfully petitions this Honorable Court for an Order granting supersedeas of the *Final Order* of the Administrative Law Court, which is currently under appeal. (ALC Final Order, Exhibit C; Notice of Appeal; Exhibit D).

The grounds for this Petition are that BREDL has received notice from Respondent Dominion Energy that it is commencing work on the gas pipeline expansion project, which is at the very center of this appeal. (Dominion Notice, Exhibit E; Gayle Kathy Andrews Verification, Exhibit F). Because the gas pipeline expansion project calls for permanent fill impacts and permanent clearing impacts to South Carolina wetlands and streams, a stay is necessary to

prevent a contested issue from becoming moot.[1] Contrary to Dominion's representations, these permanent environmental impacts cannot be reversed simply by abandoning the project, especially once excavation, filling, and clearing has commenced.[2] A stay is also necessary to avoid irreparable harm to Petitioner, its constituents, and the affected geographic area during the pendency of the appeal.

PRIOR APPLICATIONS FOR REVIEW

BREDL previously filed an Emergency Petition for Writ of Supersedeas and Motion for Expedited Hearing directly with the Court of Appeals on December 11, 2023, citing the imminent construction of the project as extraordinary circumstances meriting a direct petition to the Court. SCDHEC filed a letter in lieu of a return, taking no position on the emergency petition. Dominion filed a return, wherein it requested that the Court deny the emergency petition for writ of supersedeas and dismiss the appeal as moot. BREDL filed a reply to the return. Dominion then filed a motion to file sur-reply, which the Court granted.

On January 10, 2024, the Court of Appeals issued an Order (1) granting BREDL's motion for an expedited hearing of the emergency petition, (2) expressly denying Dominion's request to dismiss the appeal as moot, noting that nothing prevented it from raising the argument in its *appellate brief*; and (3) remanding BREDL's petition for writ of supersedeas to the ALC for consideration. (Order, Exhibit A).

---

[1] The terms "permanent fill impacts" and "permanent clearing impacts" are not BREDL's characterizations. The terms are taken directly from the ALC's *Final Order*, which is under appeal. (ALC Final Order, Exhibit C).

[2] Despite its representations, Dominion offers no evidence that it has the ability to "restore any affected areas" once these permanent impacts are realized. To the contrary, as discussed below, Dominion Energy's safety record demonstrates that the project poses serious risks to the environment and its citizens.

On February 26, 2024, the ALC held a status conference with the parties via telephone. On February 27, 2024, BREDL filed a formal written Petition for Writ of Supersedeas with the Administrative Law Court. Once again, SCDHEC filed a letter in lieu of a return, taking no position on BREDL's petition for writ of supersedeas. On March 8, 2024, Dominion filed a return to the petition. Despite the Court of Appeals' prior order, which declined to dismiss the appeal on mootness grounds absent a full briefing on the merits, Dominion argued that the ALC should deny BREDL's petition for supersedeas because, in its view, the appeal was moot. On March 19, 2024, the ALC held a hearing on BREDL's petition.

THE ADMINISTRATIVE LAW COURT'S RULING

On April 2, 2024, the ALC issued an Order Denying BREDL's Motion for Supersedeas. (Order, Exhibit G). The ALC's order expressly claims to make no ruling on whether the underlying case is moot, stating, "I do not rule on whether the case is moot," but then, confoundingly, denies BREDL's petition, finding that "an intervening event has occurred" and that, as a result, "the circumstances of the underlying case point to it being moot." (Order, p. 12 and 13).[3] Respectfully, the ALC cannot have it both ways. It cannot base its findings on rulings it claims not to make. See *Ketterman v. South Carolina Farm Bureau Mut. Ins. Co*., 395 S.E.2d 187 n.1, 302 S.C. 276 n.1 (1990), citing The Concise Oxford Dictionary of Proverbs 109 (J.A. Sampson ed. 1982), ("You cannot have your cake and eat it. You cannot 'have it both ways': once the cake is eaten, it can no longer be 'had' or retained in one's possession. The positions of have and eat are often reversed.").

[3] Specifically, the ALC claims to not make a ruling on whether the underlying case is moot, but then conducts a mootness analysis, wherein it determines that the issuance of a Section 404 Permit by the Army Corps of Engineers somehow serves to preclude BREDL from obtaining effectual relief. This and other findings of the ALC are addressed below.

On April 3, 2024, BREDL notified the Court of Appeals of the ALC's Order and requested leave to re-petition this Court for a writ of supersedeas pursuant to a prior order of the Court. On April 4, 2024, the Court of Appeals entered an Order granting BREDL leave to file a Petition for Writ of Supersedeas. Accordingly, BREDL hereby respectfully petitions this Honorable Court to grant a Writ of Supersedeas.

FACTUAL BACKGROUND

The instant appeal arises from Petitioner's challenges the decision of the South Carolina Department of Health and Environmental Control ("SCDHEC") to issue Dominion Energy a Section 401 Water Quality Certification pursuant to regulation 61-101 of the South Carolina Code of Regulations and R. 19-450 Certification ("Certifications"). The Certifications, which were subsequently approved by the ALC, authorize the construction of a gas main in Jefferies Creek, Mills Branch, Bigham Branch, Briar Branch, Barfield Mill Creek, Bullock Branch, wetlands, and unnamed tributaries to the Great Pee Dee River in Florence County, South Carolina that will result, *inter alia*, in permanent fill impacts, temporary excavation impacts, temporary clearing impacts and permanent clearing impacts to wetlands and streams. (ALC Final Order, Exhibit C).

Specifically, Dominion Energy is proposing to construct approximately 76,218 LF of new 16-inch diameter steel natural gas main that runs from River Neck Road to the Kingsburg Valve Station in Florence County, South Carolina. (Request for Final Review Conference, Exhibit H). The project consists of the installation of a 16-inch gas main within an approximately 40-foot-wide existing easements and a 10-foot-wide expansion of the easement to the west. The proposed project will result in temporary clearing impacts to the 6.326 acres of wetlands and 53 linear feet of stream, temporary excavation impacts to 8.35 acres of wetlands

and 119 linear feet of stream, permanent fill impact to 0.0041 acres of wetlands and 22 linear feet (0.0045 acre) of stream, and permanent clearing impacts to 2.986 acres of wetlands and 21 linear feet of stream. (Ibid). Stated differently, Dominion's project proposes impacts to 32 separate wetlands or waters, including:

- Twenty-seven (27) temporary excavation pacts totaling 8.378 acres;
- Twenty-nine (29) permanent clearing impacts totaling 2.990 acres;
- Three (3) permanent fill impacts totaling 0.009 acres; and
- Nine (9) temporary clearing impacts totaling 6.337 acres.

Appellant, Blue Ridge Environmental Defense League, is a regional, non-profit, community-based organization founded on earth stewardship, environmental democracy, social justice, and community empowerment. BREDL's members are citizens and residents of South Carolina who own property, reside and use natural resources in Florence County and specifically in the vicinity where the proposed project is located.

As argued during the Contested Case Hearing before the ALC, BREDL has grave concerns about the environmental impacts of this project and the justice of placing yet another pipeline in an overburdened community. This pipeline will necessarily have an adverse impact of development on this rural community. BREDL's members use and enjoy natural resources in the vicinity of the proposed project. They breathe the air, drink and use the water, walk and drive in the community and enjoy the wildlife, natural streams and forests in their rural community. BREDL and its members are concerned that this project and related development will harm them and the natural resources they value and enjoy.

BREDL is informed and believes that the DHEC staff's decision was made in violation of applicable statutes, regulations and rules contained in the 401 Water Quality Regulations and R.

19- 450 Regulations. This appeal seeks to address, *inter alia*, whether the project violates the requirements of DHEC Regulations 61-101.F, in that:

1. The project is categorically not water dependent and the project purpose is impermissibly narrow in violation of DHEC Regulations 61-101.F.3(a) and 19-450.9; and
2. There are feasible alternatives to the activity, which would reduce adverse consequences on water quality and classified uses, and therefore the approval of this project violates DHEC Regulations 61-101.F.5(b), 61-101.F.3(b) and 19-450.9; and
3. The project will permanently alter the aquatic ecosystem in the vicinity of the project such that its functions and values are eliminated or impaired and it fails to take into account the physical, chemical, and biological impacts, including cumulative impacts of the proposed activity and reasonably foreseeable similar activities of the applicant and others in violation of DHEC Regulation 61-101.F.5.(a), 19-450.9 and 61-101(F)(3)(c); and
4. The proposed activity adversely impacts special or unique habitats, in violation of DHEC Regulation 61-101.F.5.(d) and 19-450.9; and
5. The project proposes to fill and make significant alterations to a water of the State violating DHEC Regulations 61-9 and 61-68, and thus also violates Regulation 61-101 and 19-450.9; which require compliance with these additional regulations; and
6. The project calls for permanent impacts to wetlands associated with the project, altering the hydrology of those wetlands and causing additional adverse impacts to these wetlands, all in violation of DHEC Regulations 61-9, 61-68, 61-101.F and 19-450.9 in that the benefits from preserving the area in its unaltered state is greater than the proposed use.

STANDARD OF REVIEW

"In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. In appellate matters, the purpose of a supersedeas is to prevent the occurrence of an event that would render judgment or relief, and thus the appeal, meaningless. "A case is moot 'when judgment, if rendered, will have no practical legal effect upon existing controversy.'" *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 428 S.C. 638, 642, 837 S.E.2d 485 (2020), citing *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

ANALYSIS

In the present case, BREDL has received Notice that Respondent Dominion Energy that it is commencing work on the gas pipeline expansion project, which is at the very center of this appeal. (Dominion Notice, Exhibit E; Verification, Exhibit F). As set forth in the ALC's Final Order, the project will result in permanent fill impacts, temporary excavation impacts, temporary clearing impacts and permanent clearing impacts to wetlands and streams. (ALC Final Order, Exhibit C). Because the gas pipeline expansion project specifically calls for permanent fill impacts and permanent clearing impacts to South Carolina wetlands and streams, a stay is necessary to prevent a contested issue from becoming moot. Contrary to Dominion's representations, these permanent environmental impacts cannot be reversed simply by abandoning the project, especially once excavation, filling, and clearing has commenced. A stay

is also necessary to avoid irreparable harm to Petitioner, its constituents, and the affected geographic area during the pendency of the appeal.

Additionally, BREDL respectfully submits that the ALC erred in denying its Petition for Writ of Supersedeas for each of the following reasons:

I. The Corps' Issuance of the Section 404 Permit Does Not Moot the Issues in this Appeal.

As the ALC's very own order acknowledges, although not automatic, a State's withdrawal of a 401 Water Quality Certification for substantive reasons, can, in fact, serve as grounds for suspension, modification, or revocation of a Section 404 Permit by the Army Corps. Engineers. (ALC Order, Exhibit G, p. 10). "Where a state, after issuing a 401water quality certification for an NWP, subsequently attempts to withdraw it for substantive reasons after the effective date of the NWP, the division engineer will review those reasons and consider whether there is substantial basis for suspension, modification, or revocation of the NWP authorization as outlined in § 330.5." 33 C.F.R § 330.4(7).

Here, the ALC's Final Order affirms DHEC staff's decision to issue Dominion Energy a Section 401 Water Quality Certification. BREDL asserts that DHEC's decision to issue a Section 401 Water Certification was made in violation of applicable statutes, regulations, and rules contained in the 401 Water Quality Regulations and R. 19-450 Regulations, and violates the requirements of DHEC Regulations 61-101. If BREDL is successful revoking the Section 401 Water Quality Certification, it can then petition the Corps. to withdraw the permit.

The fact that the Corps is authorized to exercise some discretion in deciding whether the State's reasons for withdrawal of a 401 Water Quality Certification provides a substantial basis for revocation of a Section 404 Permit, does not in any way render BREDL's appeal moot. Indeed, the ALC's own Order acknowledges, "[T]he Corps is authorized to 'reevaluate the

circumstances and conditions of any permit, including regional permits, either on [its] own motion, at the request of the permittee, **or a third party**, or as the result of periodic progress inspections, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest." (ALC Order, Exhibit G, page 10, citing 33 C.F.R. § 325.7(a)). Here, revocation of the Water Certification as a result of a successful Appeal would provide BREDL with a viable basis to seek withdrawal of the permit from the Army Corps. The ALC's order even acknowledges that "it is possible that reversal of the state's 401 Certification could influence the Corps to grant relief," but then fails to allow BREDL the opportunity to seek revocation of the 401 Certification, summarily finding that such effectual belief would be "exceeding speculative". (ALC Order, Exhibit G, p. 13).

In its previous filings, Respondent Dominion Energy previously argued that this Honorable Court should take its cue from the Administrative Law Court's decision in *S.C. Coastal Conservation League v. S.C. Dep't of Health and Env't Control,* Docket No. 15-ALJ-07-0404-CC, and deny the Petition for Writ of Supersedeas, arguing that "nearly identical circumstances exist here." However, Respondent disregards that the Court of Appeals expressly disagreed with the decision to deny supersedeas and later *granted* Appellant's petition, finding that "supersedeas is necessary to prevent contested issues from becoming moot." (Exhibit I, Court of Appeals' Order granting Petition for Writ of Supersedeas, filed December 15, 2016, App. Case No. 2016-001758, citing Rule 241(c)(2), SCACR).

While the Court of Appeals later vacated the order imposing a stay in that case, it did so **only on the condition** that the subject road would only be used for emergency vehicles and that Horry County will not connect the road adjacent to the properties *until remittitur has been sent down in this case*. "Respondents' motion to vacate the stay is granted under the condition that the

road will only be used for emergency vehicles and Horry County will not connect the road to adjacent properties until the remittitur has been sent down in this case." (Orde*r,* Exhibit J). In other words, the stay was lifted only because conditions were imposed that would prevent a contested issue from becoming moot during the pendency of that appeal. The ALC's order denying supersedeas disregards that the stay in *Murphy* was only lifted because certain conditions were put in place to prevent contested issues from becoming moot during the course of the appeal.

Here, neither the ALC nor Dominion Energy dispute that the pipeline project will result in permanent fill impacts and permanent clearing impacts to South Carolina wetlands and streams. Because the project expressly calls for permanent impacts to this State's wetlands and streams, a stay is necessary to prevent a contested issue from becoming moot. This is the very reason why stays exist in the first place: to prevent the occurrence of an event that would render judgment or relief, and thus the appeal, meaningless. "A case is moot 'when judgment, if rendered, will have no practical legal effect upon existing controversy.'" *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 428 S.C. 638, 642, 837 S.E.2d 485 (2020), citing *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). If Dominion is permitted to proceed with a project that calls for permanent environmental impacts to this State's wetlands and streams, it will be impossible for any reviewing court to grant effectual relief. Accordingly, Petitioner respectfully requests that this Honorable Court grant its Petition for Writ of Supersedeas so as avoid a contested issue from becoming moot.

Further, contrary to Respondent's contention and the ALC's Order Denying Motion for Supersedeas, the Corp's issuance of a Section 404 Permit does not moot BREDL's ability to challenge DHEC's issuance of a Section 401 Water Quality Certification on appeal. Respondent's position is directly undermined by long-standing cases like *Murphy v. South Carolina Dep't of Health & Envt'l Control,* 396 S.C. 633, 723 S.E.2d 191 (2012). Just like this case, *Murphy* involved a challenge to a 401 Certification granted by DHEC. *See* 396 S.C. 633, 636, 723 S.E.2d 191, 192 (2012). Just like this case, the Corps issued its Section 404 permit after DHEC issued its 401 Certification, and while the challenge to the 401 Certification was pending. *Id.* at 638, 723 S.E.2d 194.

Under Dominion's theory, the Appellant's challenge to 401 Certification in *Murphy* should have been rendered moot when the Corps issued a federal permit. However, the *Murphy* case continued for several years after issuance of the federal permit, with the South Carolina Supreme Court considering whether DHEC should have issued its 401 Certification, even though the Section 404 federal permit had already been issued and had not been challenged. *Id.* ("The issuance of this [Corps 404] permit has not been challenged)." Indeed, the Supreme Court explicitly stated that the Corp's issuance of its Section 404 permit was "not dispositive" to the Court's 401 Certification analysis. *Id.* at 645, 723 S.E.2d at 198 ("Additionally, although the analysis of the Corps is not dispositive, because the Corps eventually issued the fill permit, it apparently concluded that the District had overcome these presumptions and established no practicable alternatives existed.") Said differently, the Corp's issuance of a Section 404 permit does not moot Petitioner's ability to challenge DHEC's Section 401 Certification on appeal.

Finally, Dominion's pre-emption argument is further undermined by the fact that States may generally regulate water quality more stringently than as required by the Clean Water Act.[4] Indeed, Section 404 of the Clean Water Act explicitly provides, "Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such state, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements." 33 U.S.C. § 1344(t). Contrary to Respondent's contention and the ALC's Order, the issuance of a Section 404 Permit does not moot the instant Appeal nor does it deprive the Court of Appeals of jurisdiction to review the underlying Section 401 Certification.

Because the project expressly calls for permanent impacts to South Carolina wetlands and streams, a stay is necessary to prevent a contested issue from becoming moot. The permanent environmental and social impacts posed by the project cannot simply be undone once the project is commenced and/or completed. Accordingly, Petitioner respectfully request that this Honorable Court grant its Petition for Writ of Supersedeas.

II. <u>The Proposed Pipeline Project calls for Permanent Impacts, which Cannot Simply be Undone by Later Abandoning the Project.</u>

In an attempt to minimize the risks posed by the pipeline project, Dominion suggested that the permanent impacts posed by the pipeline project are "not irreparable" because if BREDL

[4] 33 U.S.C. § 1370. EPA regulations note that this non-preemption clause is applicable to water quality standards. 40 C.F.R. § 131.4(a) ("As recognized by section 510 of the Clean Water Act, States may develop water quality standards more stringent than required by [the EPA water quality standards] regulation.").

prevails on appeal, "Dominion could abandon or remove installed segments of the Project and restore any affected areas." Respondent's argument is specious at best. As noted above, permanent impacts are by their very definition permanent in nature. They are not temporary. Permanent impacts cannot be reversed by simply abandoning a project, especially once excavation, filling, and clearing has commenced.

Despite its claims, Dominion offers no evidence that it has the ability to "restore any affected areas" once these permanent impacts are realized. To the contrary, Dominion Energy's safety record demonstrates that this project could pose serious risks to the environment and citizens. In 2018, for example, Dominion was cited for failing to control sediment near a 55-mile pipeline it built in the upstate of South Carolina.[5] Sediment washing off the pipeline's construction sites wound up in creeks that feed into the South Tyger River, where the Woodruff-Roebuck Public Water District has an intake pipe. The runoff from Dominion's construction also worked its way into the river and clogged the pipe, causing the Woodruff-Roebuck system to buy water from another utility for more than 10,000 customers south of Spartanburg.[6] Here, City of Florence drinking water is produced at a surface water treatment that withdraws water from the Great Pee Dee River, which runs along the proposed pipeline. Accordingly, this Court should not rely on unsubstantiated claims that Dominion can simply undo any harm caused by construction of the pipeline project during the pendency of this appeal. The pipeline poses a real, permanent threat to the affected wetlands, waters, and surrounding communities.

---

[5] https://abcnews4.com/news/local/south-carolina-fines-dominion-energy-for-polluting-drinking-water

[6] https://www.greenvilleonline.com/story/news/2018/05/25/dominion-energy-under-scrutiny-after-mud-clogs-water-system-near-utilitys-sc-project/645320002/

It is also important to note that the express goal of the Clean Water Act is to preserve "fishable and swimmable waters." *See Friends of the Earth, Inc. v. Gaston Copper*, 204 F.3d 149 (4th Cir. 1999), stating, "One of the well-recognized aims of the Act is to ensure that the nation's waterways are 'fishable and swimmable.' […] Congress proclaimed this goal to provide 'for the protection and propagation of fish, shellfish, and wildlife and provide [ ] for recreation in and on the water.] 33 U.S.C. 1251(a)(2)." Allowing Dominion Energy to proceed with construction of a gas pipeline along these waterways during the pendency of this appeal would undermine the purpose of the Clean Water Act and effectively render this appeal meaningless. Accordingly, Petitioner respectfully request that this Honorable Court grant its Petition for Writ of Supersedeas.

III. The Petition complies with Rule 241, SCACR.

Petitioner respectfully submits that the Petition provides a sufficient factual background for the Court to understand the Petition and makes clear and intelligible arguments in support of Supersedeas. Further, the Petition is accompanied by a notarized verification, signed by Ms. Gail Kathy Andrews. Ms. Andrews is not only the Executive Director of Blue Ridge Environment Defense League, but also a homeowner who received notice from Dominion that it intends to begin construction of the gas pipeline during the pendency of this appeal. The verification specifically provides that, to the best of her knowledge and belief, the facts set forth in the Petition for Writ of Supersedeas are accurate, thereby satisfying the requirements set forth under Rule 241, SCACR. Contrary to Respondent's contention, there is no requirement that Ms. Andrews regurgitate arguments, which are already set forth in a petition that she has expressly verified, nor would it benefit this Court to have the same arguments set out twice.

Finally, "South Carolina policy favors the disposition of issues on their merits rather than on technicalities." *Strother v. S.C. Dep't of Emp't & Workforce* (South Carolina Administrative Law Court, 2016), *citing Mictronics, Inc. v. S.C. Dep't of Rev.*, 345 S.C. 506, 548 S.E.2d 223 (S.C. App. 2001). Respondent asks this Honorable Court to deny the Petition on alleged technicalities, which even if true, pose no prejudice to Respondent. Petitioner respectfully requests that this Honorable Court look past these diversionary tactics, rule on the merits of its Petition, and grant an Order of Supersedeas so as to avoid having contested issues become moot during the pendency of this appeal.

IV. A Bond would be an Inappropriate Imposition on Petitioner and Thwart the Administration of Justice.

In a final attempt to thwart Petitioner's ability to pursue its appeal, Dominion requests that Petitioner (a regional, non-profit, community-based organization, consisting of local residents) be required to post a **$5.3 Million Dollar bond** in the event supersedeas is granted.[7] Dominion, a sophisticated energy giant, with operations across sixteen states, reported yearly revenue of $16.72 billion dollars, and reported assets totaling $103.823 billion dollars,[8] understands that small community-based organizations like BREDL cannot afford to pursue an appeal if such a bond were imposed on them. This is especially true in instances like the present one, where a large segment of the organization's members consist of low-income, minority residents, with long-standing ties to the community.

Pursuant to Rule 241(c)(3), SCACR, the imposition of a supersedeas bond is notably <u>not</u> a requirement for obtaining a writ of supersedeas. To the contrary, the decision on whether or

---

[7] Interestingly, the bond amount requested by Dominion has inexplicably gone up by $2,5000,000 in just two months, having previously requested a bond form this Court for $2,800,000 bond, instead of the $5,300,000 bond requested from the ALC.

[8]https://www.sec.gov/ix?doc=/Archives/edgar/data/103682/000119312520054469/d854390d10k.htm

not impose a supersedeas bond is completely discretionary and limited to those circumstance where the appellate court deems it appropriate. Rule 241(c)(3), SCACR. Here, the imposition of supersedeas bond is not appropriate.

First, supersedeas in the instant case would not require Dominion to do *anything* other than maintain the status quo—to do what it has always done and continues to do. Dominion readily admits that it is *already* supplementing pipeline-supplied natural gas with liquid natural gas ("LNG") during the coldest months in the Myrtle Beach area. (Return, p. 11). This has been their long-standing practice, and part of their normal operating expense. By seeking a supersedeas bond, Dominion seeks to shift the costs associated with LNG to Petitioner despite the fact that LNG has traditionally been a standard operating cost incurred by the company.

Second, while Dominion may speculate as to future population growth and potential costs associated with said growth, this is only speculation. Projections, polls, and industry opinions are not facts, nor are they certainties. Like any form of speculation, they are subject to manipulations, human error, and change.

Third, Dominion's opinions regarding future costs are not based on the projections of an independent, qualified third party. Instead, Dominion attempts to pass off the affidavit of one of its own 21,000 employees as authority. Respectfully, while Mr. West is a professional engineer, he is not an accountant, financial expert, or economist, nor does he possess any qualifications, which would enable him to estimate potential population growth and its associated costs. More to the point, even as a professional engineer, Mr. West did not purport to offer an opinion to any degree of professional certainty. As a result, his testimony should not be given undue weight by this Court. It does not offer a professional opinion and seeks only to shift standard operating costs onto Petitioner in an attempt to thwart their pursuit of an appeal altogether.

CONCLUSION

For each of the foregoing reasons, Appellant Blue Ridge Environmental Defense League respectfully request that this Honorable Court grant its Petition for Writ of Supersedeas. An Order of Supersedeas is necessitated to prevent a contested issue from becoming moot. The permanent environmental and social impacts of the pipeline project cannot be undone once the project is commenced and/or completed. Commencement of the project would make it impossible for the reviewing court to grant effectual relief and would directly contravene the stated goals of the Clean Water Act.

Respectfully submitted,

STEPHEN A. SPITZ, ESQ.
A BUSINESS LAW FIRM

s/Stephen A. Spitz
Stephen A. Spitz (SC Bar No. 5287)
164 Market Street, Suite 157
Charleston, South Carolina 29401
(843) 577-6531
stephenspitz994@gmail.com

and

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez
Jesse Sanchez (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, South Carolina 29464
(843) 814-8181
jesse@jessesanchezlaw.com

Attorneys for Petitioner
Blue Ridge Environmental Defense League

April 15, 2024
Charleston, South Carolina

RECEIVED
Apr 15 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III
Administrative Law Judge

Appellate Case No. 2023-001351

Blue Ridge Environmental Defense League, Appellant,

v.

South Carolina Department of Health and Environmental Control and Dominion Energy, Respondents.

PROOF OF SERVICE

I, the undersigned, certify that I have served Appellant Blue Ridge Environmental Defense League's Petition for Writ of Supersedeas and corresponding Exhibits via electronic mail on Counsel for Respondent Dominion Energy, Elizabeth B. Partlow, Esq. at her AIS-designated email address (beth@partlowlaw.com) and Brooks M. Smith, Esq. at his designated email address (brooks.smith@troutman.com), and Counsel for Respondent South Carolina Department of Health and Environmental Control, Bennet W. Smith, Esq. (smithbw@dhec.sc.gov), Christopher Patrick Whitehead, Esq. (whitehcp@dhec.sc.gov), and Sara Volk Martinez, Esq. (martinsv@dhec.sc.gov) at their respective AIS-designated email addresses on April 15, 2024, a copy of which is hereby attached.

[Signature on following page]

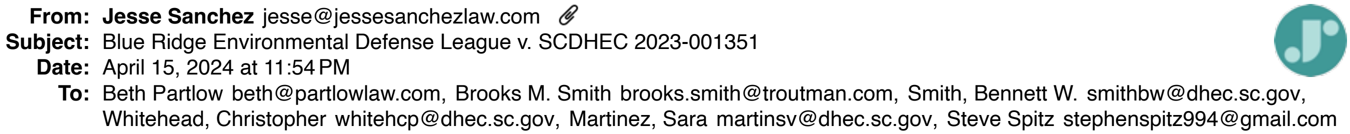
Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez
Jesse Sanchez (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, South Carolina 29464
(843) 814-8181
jesse@jessesanchezlaw.com

Attorney for Appellant
Blue Ridge Environmental Defense League

Mount Pleasant, South Carolina
April 15, 2024


From: **Jesse Sanchez** jesse@jessesanchezlaw.com
Subject: Blue Ridge Environmental Defense League v. SCDHEC 2023-001351
Date: April 15, 2024 at 11:54 PM
To: Beth Partlow beth@partlowlaw.com, Brooks M. Smith brooks.smith@troutman.com, Smith, Bennett W. smithbw@dhec.sc.gov, Whitehead, Christopher whitehcp@dhec.sc.gov, Martinez, Sara martinsv@dhec.sc.gov, Steve Spitz stephenspitz994@gmail.com

Counsel,

Attached for service, please find the attached Petition for Writ of Supersedeas, Cover Letter, and link to Corresponding Exhibits, all of which are being filed momentarily via OneDrive Electronic submission.

Regards,

Jesse

--

PLEASE NOTE WE HAVE A NEW ADDRESS:

Jesse Sanchez
The Law Office of Jesse Sanchez, LLC
751 Johnnie Dodds Blvd., Suite 200
Mount Pleasant, SC 29464
Direct: (843) 814-8181
Fax: (843) 284-3953
jesse@jessesanchezlaw.com

CONFIDENTIALITY NOTICE

This electronic mail transmission and any accompanying documents constitute information belonging to the sender and may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone at (843) 814-8181 and delete the message. Thank you.

Petition for Writ of Supersedeas 041524.pdf

Exhibits to Petition 041524.pdf
71 KB

BREDL Letter to Kitchings 041524.pdf

April 15, 2024

VIA US MAIL AND
ONE DRIVE ELECTRONIC SUBMISSION

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Blue Ridge Environmental Defense League v. SCDHEC
Appellate Case No. 2023-001351

Dear Ms. Kitchings:

Attached for filing with the Court, please find the following:

1. Appellant Blue Ridge Environmental Defense League's Petition for Writ of Supersedeas;
2. Corresponding Exhibits to the Petition for Writ of Supersedeas; and
3. Proof of Service, evidencing service on all counsel of record.

A check for the Fifty Dollar ($50.00) filing fee has been placed in today's outgoing mail. Thank you for your assistance with this matter. Should you have any questions or wish to discuss the filing, please do not hesitate to contact me directly.

Sincerely,

s/Jesse Sanchez________________

Jesse Sanchez (SC Bar No. 101906)

Cc: Elizabeth B. Partlow, Esq. (Via email only)
Brooks M. Smith, Esq. (Via email only)
Bennet W. Smith, Esq. (Via email only)
Christopher Patrick Whitehead, Esq. (Via email only)
Sara Volk Martinez, Esq. (Via email only)
Stephen A. Spitz, Esq. (Via email only)