

EXHIBIT B

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Apr 25 2024

SC Court of Appeals

THE 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.

AFFIDAVIT OF CHARLES W. HIGHTOWER

April 25, 2024

AFFIDAVIT

I, Charles W. Hightower, hereby declare as follows:

1. I am the manager of the Water Quality Certification and Wetlands section within the Division of Water Quality in DHEC's Bureau of Water.
2. I have held this position for approximately 16 years, and I worked in the same section for 2 years before becoming manager. I graduated from the University of South Carolina and hold a degree in Biology.
3. In my position, I oversee and manage DHEC's Water Quality Certification program and also DHEC's Navigable Waters program. I am familiar with the regulations for both those programs: South Carolina Regulation 61-101, Water Quality Certification ("R. 61-101"), and South Carolina Regulation 19-450, Permits for Construction in Navigable Waters ("R. 19-450").
4. I am also familiar with the case currently pending before the Court of Appeals, in which this affidavit is being offered. I was deposed as the Department's 30(b)(6) witness in this case, and I attended the Administrative Law Court's hearing of the case in February-March 2023. I also supervise the DHEC project manager who had primary review of the Project involved in this case.
5. I am offering this affidavit for the purpose of aiding the Court in determining whether the Corps' issuance of a federal permit by the United States Army Corps of Engineers ("the Corps" or "the Army Corps") has rendered this appeal moot.
6. The Project involved in this case is Dominion's proposal to construct a natural gas pipeline that will impact wetlands and streams in the path of the pipeline. The Project requires a

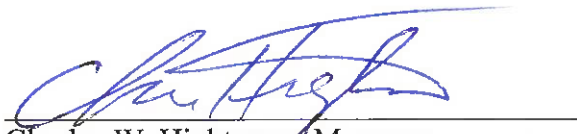
federal permit issued by the Corps, due to discharges of dredged and/or fill material to Waters of the United States that will occur as a result of construction of the Pipeline.

7. Prior to obtaining this federal permit from the Corps, Dominion was required to first obtain a State water quality certification issued by DHEC (absent a waiver of this requirement by DHEC, which did not occur in this case). The general purpose of this Certification is to ensure that water quality standards are not violated due to the completion of the Project. Additionally, while the Project is exempt from obtaining an independent permit under R. 19-450, DHEC was required in issuing the Certification to insure that the Project will comply with the provisions of those regulations. These requirements are found in R. 61-101, Section A.8, and R. 19-450, Section 3.G.
8. In my position, I frequently interact with regulatory staff with the Army Corps as part of DHEC's review of projects that require a federal permit from the Corps and an associated state water quality certification issued by DHEC. Regulatory staff for DHEC and the Corps typically coordinate during review of such projects, because similar information is often required by both agencies. Regulatory staff for DHEC and the Corps also engage in more general, programmatic discussions dealing with issues of mutual concern to both agencies' regulatory programs.
9. Based on my experience, it is uncertain how the Corps would respond to an order issued by this Court affecting the validity of the Certification issued by DHEC for this Project.
10. However, I believe there is a significant possibility that a decision by a South Carolina court to overturn, remand, or modify DHEC's State water quality certification for a project would impact an already-issued Corps' permit, potentially leading the Corps to modify, suspend, or even revoke its authorization due to the lack of a valid certification from the

State or a substantive change to the certification. This statement is based on my dealings with the Corps' regulatory staff over a number of years.

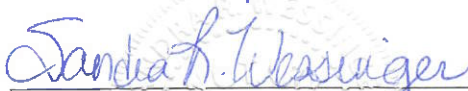
11. If a South Carolina court overturned, remanded, or modified a State water quality certification issued by DHEC, I would very likely think it was appropriate to inform the Corps of that decision. This would be true particularly if the conditions placed on a project by DHEC in its certification, and incorporated into the Corps' permit, were determined to be insufficient to ensure compliance with water quality standards or other requirements of state law. This would also be true if a court determined that a project did not comply with requirements of state law that are similar to requirements found in federal law. A number of similarities exist between state law applicable to water quality certifications and federal law applicable to dredge/fill permits issued by the Corps.

12. I am aware that the Corps has already gone on to issue a permit for this Project, while the appeal before this Court is still pending. The permit issued by the Corps is referred to as a nationwide permit. The Corps' permit incorporates the conditions included DHEC's Certification as conditions for its authorization of the Project.



Charles W. Hightower, Manager
Water Quality Certification and Wetlands
South Carolina Department of Health
and Environmental Control

SWORN to before me this
25th day of April, 2024.



Notary Public for South Carolina

My Commission Expires: 02/03/2025