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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III
Chief Administrative Law Judge

Appellate Case No. 2025-000181

Blue Ridge Environmental Defense League, Appellant,

v.

South Carolina Department of Environmental Services and Dominion Energy, Respondents.

RESPONDENT DOMINION ENERGY'S MOTION TO CLARIFY THAT NO STAY REMAINS IN EFFECT OR, IN THE ALTERNATIVE, MOTION TO VACATE

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules ("SCACR"), Dominion Energy South Carolina, Inc. ("Dominion"), through counsel, respectfully moves this Court for an order to clarify that the South Carolina Court of Appeals' May 13, 2024, Order staying the decision of the South Carolina Administrative Law Court is no longer in effect following the transfer of this case to the Supreme Court.

INTRODUCTION

This appeal arises from the challenge by Appellant Blue Ridge Environmental Defense League ("BREDL") to the final order of the South Carolina Administrative Law Court ("ALC"), which affirmed South Carolina Department of Environmental Services'[1] ("SCDES") issuance of a Section 401 Water Quality Certification to Dominion. The Certification was issued pursuant to S.C. Code Regs. 61-101 and pertains to Dominion's proposed River Neck to Kingsburg 16-inch natural gas main project (the "Project"). The Project is essential to addressing increasing demand from the Pee Dee to Myrtle Beach for natural gas amid growing residential, commercial, and industrial development, and relieving current seasonal demand issues already causing industrial gas curtailment.

The South Carolina Court of Appeals ("Court of Appeals") granted BREDL's renewed Petition for Writ of Supersedeas ("Renewed Petition") on the ground that a stay was necessary to prevent contested issues from becoming moot pending resolution of this appeal. However, upon transfer of the case to this Court, the stay issued by the Court of Appeals no longer has legal effect. This Court has not issued a stay, and no automatic stay applies under SCACR 241. Dominion, therefore, seeks clarification that it is no longer subject to the prior order of the Court of Appeals

[1] On August 20, 2024, the South Carolina Department of Health and Environmental Control ("DHEC") moved to substitute SCDES as a Respondent in this case because DHEC was abolished on July 1, 2024.

staying the Certification.

Continued delay—whether due to a stay or to prolonged appellate proceedings—will result in significant economic, regulatory, and energy supply consequences. The delay has caused, and continues to cause, substantial harm to the public and to Dominion. Specifically, the Project is critical to Dominion's ability to provide reliable natural gas service to existing customers, particularly in the winter, and new residential and non-residential customers. As the attached affidavits demonstrate, a stay prevents Dominion from proceeding with construction, leading to serious economic consequences, supply limitations, and delays in critical energy services. Therefore, Dominion respectfully requests that this Court (1) clarify that the stay is no longer in effect or (2) if the stay remains in effect, vacate the stay. However, if the Court determines that the stay remains in effect, it should require BREDL to post a supersedeas bond as a condition of its continued enforcement.

BACKGROUND

In this appeal, BREDL challenges the Final Order of the ALC affirming the decision of SCDES to issue Dominion a Section 401 Water Quality Certification pursuant to S.C. Code Ann. Regs. § 61-101. SCDES issued the Certification in connection with Dominion's application to the U.S. Army Corps of Engineers ("Corps") for coverage under Nationwide Permit 12, Oil or Natural Gas Pipeline Activities ("NWP 12"),[2] on February 4, 2022. NWP 12 permits Dominion to install the Project, a natural gas main adjacent to an existing gas main that will require an extra ten feet of right of way and will permanently affect less than 3 acres

[2] NWP 12, issued by the Corps pursuant to 33 U.S.C. § 1344 ("Section 404"), authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. Like other Section 404 permits issued by the Corps, NWP 12 requires that the State certify that the activity will comply with applicable water quality requirements. *See* 40 C.F.R. § 121.3.

of wetlands and 150 feet of stream in Florence County. BREDL requested a final review conference with the Board of the then-Department of Health and Environmental Control, which the Board denied, rendering the staff decision the final agency decision. BREDL then filed a Request for Contested Case Hearing with the ALC on April 13, 2022. The ALC conducted a hearing in this matter from February 27 – March 1, 2023, and issued the Final Order on July 24, 2023.

On August 23, 2023, BREDL filed a Notice of Appeal with the Court of Appeals. Then, on September 18, 2023, counsel for BREDL filed a Motion to Withdraw as Counsel and Extend the Briefing Schedule ("Withdrawal Motion"), which Dominion did not oppose. The Court of Appeals granted the Withdrawal Motion on November 20, 2023, allowing BREDL 30 days to find new counsel. BREDL's counsel subsequently filed a Notice of Appearance with the Court of Appeals on November 21, 2023, and then requested a 30-day extension to file Appellant's Initial Brief and Designation of Matter. Again, Dominion did not oppose the requested extension, which the Court granted on December 6, 2023, extending the deadline by which BREDL was required to file its Initial Brief and Designation of Matter until January 22, 2024.

BREDL filed an Emergency Petition for Writ of Supersedeas and Motion for Expedited Hearing on December 11, 2023 ("Emergency Petition"). On January 10, 2024, the Court of Appeals remanded the Emergency Petition to the ALC and held the appeal in abeyance. On February 27, 2024, over seven months after the ALC's Final Order and over six months after initiating its appeal, BREDL filed a Petition for Writ of Supersedeas with the ALC ("ALC Petition"), requesting a stay of the Certification. On March 19, 2024, the ALC convened a hearing to consider the ALC Petition. On April 2, 2024, the ALC issued an Order Denying Motion for Supersedeas ("Denial Order"), and on April 15, 2024, BREDL filed its Renewed Petition in the

Court of Appeals. On April 25, 2024, Dominion timely filed its Return in Opposition to the Renewed Petition, and on May 13, 2024, the Court of Appeals granted the Renewed Petition, staying the Certification while the court considered the appeal ("Stay Order").

On June 12, 2024, BREDL moved for an extension to file its initial brief, which was granted on the same date. On July 15, 2024, BREDL moved for another extension to file its initial brief, and the Court of Appeals granted BREDL's motion on July 16, 2024. After these extensions, BREDL filed its Initial Brief on August 2, 2024, nearly a year after initiating this appeal. SCDES and Dominion filed their Initial Briefs on September 19, 2024. After yet another extension, BREDL filed its Initial Reply Brief on October 21, 2024. All parties filed their Final Briefs on December 10, 2024. On March 11, 2025, this appeal was certified to this Court pursuant to Rule 204(b). This appeal has been fully briefed, and the parties are awaiting the Court's final disposition.

ARGUMENT

I. The Stay Issued by the Court of Appeals is No Longer in Effect.

This Court has exclusive jurisdiction over this appeal following its transfer from the Court of Appeals. *See* SCACR 204(b)(The "effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for ***all purposes***.")(Emphasis added.) The Stay Order was issued by the Court of Appeals in connection with a proceeding over which the Court of Appeals no longer has jurisdiction. *Id*. Because this Court has not issued a stay of its own, and no automatic stay applies under SCACR 241, Dominion respectfully requests clarification that no stay remains in effect.

II. If A Stay Is In Effect, It Should Be Vacated Because Continued Enforcement Is Not Justified.

If this Court determines that the Stay Order remains in effect, Dominion respectfully requests that it be vacated because the Stay Order imposes significant ongoing harm to the public interest and economic development—harms that will only intensify the longer this litigation remains unresolved. For the reasons detailed below, the continued enforcement of the Stay Order is unwarranted.

a. The Stay Order Is Unwarranted Because the Substantial Harm Caused to the Public Interest and Dominion Outweighs Any Potential Benefit.

This Court should consider the substantial harm caused to the public and to Dominion when determining whether to enforce a stay. *See e.g. Nken v. Holder*, 556 U.S. 418, 426 (2009) (noting that under the traditional standard for a stay pending appeal, a court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."); *see also Blum v. Caldwell*, 446 U.S. 1311, 1315 (1980) (denying a stay application and noting that when considering a stay pending certiorari review, the court must "balance the equities to determine on which side the risk of irreparable harm weighs most heavily.").

In this case, the harm caused by the continued enforcement of the stay of the Certification has significantly increased. The stay has effectively blocked the development of infrastructure essential to meeting Horry County's and Florence County's growing energy needs, leaving Dominion unable to expand its system to serve new residential developments, industrial facilities, and other projects.

This delay has led to concrete and immediate harms. First, Dominion is unable to

accommodate new customers who require natural gas service, forcing businesses and homeowners to either delay projects indefinitely or seek alternative, less efficient and more costly energy sources.[3] The affected communities continue to experience economic and developmental setbacks as a direct result of the inability to access necessary energy service.[4] Industrial projects that rely on natural gas for operations remain stalled.[5] Residential developers cannot move forward with housing projects.[6] Local governments face mounting uncertainty over their energy supply needs.[7] These delays have created a domino effect of economic harm that will not be easily reversed, even after the appeal is resolved.[8]

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[3] Attach. A, Tanner Aff. ¶ 5; Attach. B, Daniel Aff. ¶¶ 5-6; Attach. C, Robinson Aff. ¶ 5; Attach. D, Sawczuk Aff. ¶¶ 5-7; Attach. E, Denning Aff. ¶¶ 5-6; Attach. F, Marple, III Aff. ¶¶ 5-6; Attach. O, McCoy Aff. ¶¶ 4-5.

[4] Attach. C, Robinson Aff. ¶¶ 5-6; Attach. E, DenningAff. ¶¶ 5-6; Attach. F, Marple, III Aff. ¶¶ 5-7; Attach. G, Norman Aff. ¶¶ 5-7; Attach. H, Harry Aff. ¶¶ 5-7; Attach. J, McCrea Aff. ¶¶ 4-6; Attach. O, McCoy Aff. ¶¶ 4-5.

[5] Attach. C, FCEDP Robinson Aff. ¶ 6; Attach. F, Marple, III Aff. ¶ 5; Attach. K, Evans Aff. ¶¶ 5-7.

[6] Attach. A, Development Tanner Aff. ¶ 5; Attach. B, Daniel Aff. ¶ 5; Attach. E, Denning, Sr. Aff. ¶ 6 7; Attach. I, Wooten Aff. ¶¶ 4-7.

[7] Attach. C, FCEDP Robinson Aff. ¶ 5; Attach. L, Spivey Aff. ¶¶ 4-5.

[8] *See* Attach. A, Tanner Aff. ¶ 6 (highlighting the expected $1,300,000,000 economic benefit to the local community from the proposed developments and the potential reduction of that benefit due to the delay of natural gas service); Attach. B, Daniel Aff. ¶¶ 6-7 (noting construction cost increases of approximately $1,500,000 and annual operating cost increases of approximately $100,000 if Dominion is unable to service the project with natural gas, and further noting an annual property and business tax revenue of over $3,000,000 with an expected labor force of 200 as a result of the proposed development); Attach. C, Robinson Aff. ¶¶ 5-6 (addressing Florence County's inability to complete new business or housing developments due to the delay of the project, and highlighting Florence County losses in excess of $10,000,000 because of the lack of natural gas availability in the area); Attach. E, Denning, Aff. ¶¶ 4-6 (describing the issues for potential natural gas alternatives for the development, the resulting infeasibility of the alternatives due to physical and economical constraints, and the corresponding loss of potential employment opportunities, tax revenues, and other community benefits due to construction delays or eventual termination of the development because of a lack of suitable natural gas replacements); Attach. F, Marple, III Aff. ¶ 7 (noting that each month of delay equates to losses of $100,000 to $500,000, which the company is unable to recoup); Attach. G, Norman Aff. ¶ 7(noting that the total costs associated with the delays are not fully realized, and that a hotel project has incurred unresolved redesign costs, construction costs, holding costs, and operating costs as a result of the delays.); Attach. M, Saes Aff. ¶¶ 4-5(detailing an additional $300,000 in increased costs from curtailments from just one winter season and noting that there is an additional $19,000 per day cost associated with fuel oil use); Attach. O, McCoy Aff. ¶¶ 4-5 (stating that the delay is negatively impacting existing renovation projects due to the necessity to locate alternative energy source at increased costs); Attach. P, Copp Aff. ¶¶ 4-5 (addressing Williamsburg County's inability to meet the natural gas requirements for seven proposed economic development projects due to the delay.)

Second, beyond the broader economic impacts, the stay also has forced Dominion to rely on costly temporary measures to maintain energy reliability.[9] Because the new infrastructure remains on hold, Dominion must truck in liquefied natural gas during cold weather events to supplement its supply at an estimated cost of $5,372,336 from 2024 to 2026. [10] These costs are ultimately passed on to ratepayers, leading to higher utility costs for businesses and residents alike.[11]

Maintaining the stay also increases the risk of energy supply shortages. Horry County continues to experience rapid population growth, Final Order at 4; R. 4, yet Dominion remains unable to accommodate these increasing demands.[12] For example, the Myrtle Beach-Conway-North Myrtle Beach area, which includes Horry County, experienced the third-highest percentage growth among all metropolitan areas in the country between July 1, 2023 and July 1, 2024.[13] The inability to proceed with the Project could result in service shortfalls, particularly in cold weather event months, placing additional strain on existing infrastructure and increasing the likelihood of reliability issues for consumers. Final Order at 4; R. at 4. Here, the public interest in reliable and

[9] *See* Attach. N, Hoey Aff. ¶ 4(Noting that "[w]ith the continued addition of demand from previously contracted residential development, a pipeline system already beyond its capacity, and significant supplemental [liquefied natural gas] use, not only is Dominion not able to add additional customers to the system, the current system and customers are at an elevated reliability risk.")

[10] Return to Appellant's Pet. for Writ of Supersedeas, West Aff. Attachment 1; R. at 1547.

[11] Return to Appellant's Pet. for Writ of Supersedeas at 14 n.13; R. at 1426.

[12] Attach. L, Spivey Aff. ¶¶ 4-5.

[13]*See* U.S. Census Bureau, *Growth in Metro Areas Outpaced Nation*, March 13, 2025 https://www.census.gov/newsroom/press-releases/2025/population-estimates-counties-metro-micro.html#counties-percent-growth (showing that the Myrtle Beach-Conway-North Myrtle Beach metropolitan area had the third-highest percentage growth of any U.S. metro area between July 1, 2023 and July 1, 2024). This Court may take judicial notice of official government statistics from a government website. *See* SC Rule 201 Courts must take judicial ("fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); *State v. Scott*, No. 2004-UP-088, 2004 WL 6248999, at *3 (S.C. Ct. App. Feb. 12, 2004).

cost-effective energy necessary to accommodate economic growth weighs in favor of allowing the Project to proceed without further delay. Consequently, this Court should determine that no stay is warranted, and issue an order clarifying that no stay remains in effect.

b. A Stay Is Unwarranted Because There Will Be No Irreparable Impacts From the Project.

Under SCACR 241, a court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot" when determining whether a stay should be issued. Here, however, the foundational basis for the stay—that allowing construction to proceed would irreparably alter the landscape, making any future judicial relief impossible—is not sustainable. *See* Stay Order at 1 (finding that the stay is "necessary to prevent contested issues from becoming moot."). Indeed, the environmental impacts from the Project can be reversed or mitigated if the Certification is ultimately overturned. Return to Appellant's Pet. for Writ of Supersedeas at 9-10; R. at 1421-1422.

Dominion has previously noted that if BREDL were to prevail on its appeal, no irreparable harm to BREDL or to the environment will occur. *Id.* Dominion could abandon or remove installed segments of the Project and restore any affected areas.[14] Therefore, any impacts would not be inherently irreversible. There is no evidence in the record showing that Dominion's ability to restore impacted areas would be inadequate. Thus, any argument that proceeding with construction of the Project will cause permanent and irreparable harm is, at best, speculative and does not support maintaining a stay that is imposing very real and significant harm to Dominion and the public. Accordingly, no stay is warranted, and to the extent that the Stay Order remains in effect,

[14] *See* Attach. N, Hoey Aff. ¶ 5(noting that "Dominion can abandon the installed segments of the Project and restore any affected areas" and confirming that "Dominion will adhere to all restoration requirements outlined in permits for the Project…")

Dominion respectfully requests that the stay is vacated.

III. If the Stay Remains in Effect, the Court Should Condition Continued Enforcement on the Posting of a Supersedeas Bond.

Should this Court determine that the stay issued by the Court of Appeals remains (or should continue to remain) in effect, Dominion respectfully requests, pursuant to SCACR 241(c)(3), that any continued enforcement be conditioned on the posting of an appropriate supersedeas bond.

As previously established before the ALC[15] and reiterated through updated evidence submitted with this Motion, continued delay of the Project is causing substantial and escalating costs. Dominion must rely on costly and temporary measures—including the trucking of LNG during cold weather events—to supplement its supply in the absence of the Project. These costs are not speculative; they are based on actual expenditures and updated projections that reflect worsening conditions. Zachary West, Dominion's Manager of Strategic Planning for Gas Operations, initially estimated that the delay would cost Dominion $5.3 million over a three-year period.[16] That figure has only increased.[17]

Neither BREDL nor any other party has ever contradicted Mr. West's original testimony or cost estimates. Further, the ALC credited Mr. West's prior affidavit and testimony as credible, expressly finding that Dominion had shown by a preponderance of the evidence that it would incur at least $5.3 million in costs if construction were delayed for three years. Denial Order at 15; R. p. 1529; *see also Stoney v. Stoney*, 422 S.C. 593, 595 (2018)("[A] trial judge is in a superior position

[15] For example, Dominion's witnesses testified—without contradiction—that the population in the Myrtle Beach area is rapidly increasing. Final Order at 4-5; R. at pp. 4-5.

[16] Return to Appellant's Pet. for Writ of Supersedeas, West Aff. Attachment 1; R. at 1547.

[17] *See* Attach. N, Hoey Aff. ¶ 4 (Explaining that the circumstances underlying Zachary West's original projections—namely, system constraints, increasing demand, and reliance on temporary measures—have only worsened. As a result, the projected $5.3 million in delay-related costs should now be viewed as a conservative estimate.)

to assess witness credibility.") Those costs—now projected to be higher—will ultimately be borne by ratepayers if Dominion is not permitted to proceed with construction. Likewise, if the bond is issued then that bond would help mitigate that otherwise would be shifted to ratepayers. Accordingly, if the Court determines that the stay should remain in effect, Dominion respectfully requests that BREDL be required to post a supersedeas bond in an amount no less than Dominion's projected increased costs associated with further delay. A stay that continues to impose significant financial harm on Dominion and its customers—without any security to compensate for those harms—would be inequitable, particularly given the lack of any irreparable injury to BREDL or the environment.

CONCLUSION

For the reasons discussed above, Dominion submits that the Court of Appeals' Stay Order is no longer effective. Even if it were, continued enforcement will result in substantial and escalating harm to Dominion and the communities it serves and is not justified. Any potential environmental impacts can be mitigated or reversed if BREDL ultimately prevails. Further, to the extent that the Court finds that the stay remains in effect, the Court should condition continued enforcement on the posting of a supersedeas bond. Accordingly, Dominion respectfully requests that this Court grant its Motion to Clarify That No Stay Remains in Effect and, in the Alternative, Motion to Vacate.

[signatures on following page]

Dated: April 15, 2025

Respectfully submitted,

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