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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 REPLY TO APPELLANT'S RETURN TO 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(f) of the South Carolina Appellate Court Rules ("SCACR"), Dominion Energy South Carolina, Inc. ("Dominion"), through counsel, respectfully submits this Reply to Appellant Blue Ridge Environmental Defense League's ("BREDL") Return (the "Return") to Dominion's April 15, 2025, Motion to Clarify that No Stay Remains in Effect, or, in the Alternative, Motion to Vacate (the "Motion").

<u>INTRODUCTION</u>

Throughout its Return, BREDL launches baseless attacks on Dominion's motives for filing the Motion. For instance, BREDL states "Dominion waited over a full year after the Court of Appeals granted the stay to file the [Motion]…[t]his suspicious timing is indicative of tactical maneuvering rather than genuine urgency[.]" Return at 3. BREDL repeats these attacks throughout its Return. *See, e.g.*, Return at 1 ("Dominion's questionable timing in filing this motion…reflects tactical maneuvering designed to evade judicial review by commencing construction before this Court can address the substantive regulatory violations at issue."); Return at 14 ("This delay is indicative of a deliberate strategy to rush construction…[t]he Court should recognize this pattern of procedural manipulation and refuse to reward tactics designed to sidestep meaningful review[.]"); Return at 18 ("Dominion waited until the eleventh hour, after the appeal has been fully briefed and just before oral argument, to suddenly claim urgent economic necessity based on entirely new evidence."). Ultimately, these are unwarranted and baseless accusations of delay and "tactical maneuvering."

The assertion that Dominion delayed the filing of the Motion to tactically maneuver itself into a more favorable position is both untrue and packed with inconsistencies. Dominion vigorously opposed BREDL's Writ of Supersedeas in both the Administrative Law Court ("ALC") and the Court of Appeals. *See,* R. at 1254-1256, 1413-1558. Dominion presented an affidavit

describing harm to Dominion's ability to serve its customers, harm that has only increased as this case has dragged on. Importantly, Dominion could not have filed the Motion prior to the Court of Appeals certifying the appeal to this Court on March 11, 2025.[1] Indeed, a significant factor motivating Dominion's decision to file the Motion relates to the change in jurisdictional authority from the Court of Appeals to this Court, the effect of that jurisdictional change on the Stay Order, and the lack of any applicable automatic stay rule. More specifically, the Court of Appeals issued the Stay Order but then lost jurisdiction over the appeal after certifying it to this Court. Motion at 5.

Moreover, this Court has not issued a stay of its own, and, as explained below, no automatic stay applies under SCACR 241 ("Rule 241") or the cases cited by BREDL. Before the Court of Appeals certified the appeal to this Court, there was no jurisdictional question nor was there any dispute concerning the applicability of an automatic stay. Indeed, BREDL affirmatively sought and received a Writ of Supersedeas from the Court of Appeals. Put differently, there were no jurisdictional or stay issues to clarify before the Court of Appeals warranting the filing of something like the Motion.[2] BREDL's baseless and misleading attacks on Dominion's motives are simply attempts to distract this Court from BREDL's weak arguments in its Return, and should be rejected in their entirety.

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[1] Had the case remained in the Court of Appeals, Dominion's Motion would have been one to lift the supersedeas and/or to expedite the appeal.

[2] As discussed in more detail below and in the Motion, the continuation of the stay has significantly increased the harm to Dominion, further motivating Dominion to file the Motion.

ARGUMENT

I. Rule 241(a) and South Carolina Supreme Court Precedent Do Not Establish That the Stay Remains in Effect Throughout the Appeal.

BREDL cites Rule 241(a) and several South Carolina Supreme Court cases to argue that the Stay Order remains in effect throughout the appeal. As discussed in more detail below, these purported authorities are not applicable to the facts of this case, and BREDL's arguments that the Stay Order remains in effect now that the appeal is before this Court should be rejected.

a. Rule 241(a) is Not Applicable Here.

SCACR Rule 241(a) states the general rule that filing a notice of appeal in civil cases automatically stays the decisions and relief specified in the order, judgment, decree, or decision being appealed. This automatic stay remains in effect throughout the appeal process unless it is lifted by the lower court, administrative tribunal, appellate court, or a judge or justice from the appellate court. Rule 241(a).

However, Rule 241(b) explicitly states that exceptions to the general rule are found throughout statutes, court rules and case law. Rule 241(b)(11) is applicable here: Appeals from administrative tribunals are an exception to the automatic stay of appeals. Rule 241(b)(11) acknowledges the rule set forth in state statutes. S.C. Code Ann. § 1-23-600(H)(5) applies to timely filed requests for a contested case hearing relating to South Carolina Department of Environmental Services ("SCDES") decisions and states that the ALC's final decision issued in a contested case may not be stayed except by order of the ALC or the Court of Appeals. S.C. Code Ann. § 1-23- 610(A) provides that the serving and filing of a notice of appeal does not by itself stay enforcement of an administrative law judge's decision. Because an exception to the general rule applies, meaning there is no automatic stay, an aggrieved party may obtain a stay only by requesting an order imposing a supersedeas of the administrative order, judgement, decree, or

decision. Rule 241(c)(1).

On February 4, 2022, SCDES issued the Certification to Dominion. BREDL filed a Request for Contested Case Hearing with the ALC on April 13, 2022. The ALC conducted a hearing on the matter from February 27, 2023, through March 1, 2023, and issued its Final Order on July 24, 2023, affirming the SCDES decision to issue the Certification. On August 23, 2023, BREDL appealed the ALC's Final Order to the Court of Appeals ("Court of Appeals"). On December 11, 2023, BREDL filed in the Court of Appeals a request for an emergency writ of supersedeas and a motion for an expedited hearing of the request for writ. In an order dated January 10, 2024, the Court of Appeals granted BREDL's request for an expedited hearing of the emergency writ, held the appeal in abeyance, and remanded the request for writ back to the ALC for consideration. 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. 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. In response, on April 5, 2024, BREDL filed a Petition for Writ of Supersedeas with the Court of Appeals. The Court of Appeals granted BREDL's Petition for Writ of Supersedeas on May 13, 2024.

BREDL repeatedly references Rule 241(a) and several cases, as discussed in subsection (b) below, that address automatic stays pursuant to Rule 241(a). However, no automatic stay is implicated in this case because the Stay Order was issued pursuant to an automatic stay exception.[3]

b. *Stokes-Craven, Lancaster,* and *Graham* Are Not Relevant to the Present Issue.

BREDL cites to three cases and states that "[t]his Court's precedent unequivocally

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[3] *See, e.g.*, Return at 2 (BREDL acknowledging the Court of Appeals issued the Stay Order pursuant to BREDL's Petition for Writ of Supersedeas).

establishes that stays remain in effect throughout the appellate process until specifically lifted or until the remitter is issued." Return at 3. But these cases do not support BREDL's assertions.

Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016), was a legal malpractice case in which the Court had to decide when the statute of limitations began to run. The Court noted the provisions of Rule 205, SCACR, which vests exclusive jurisdiction in the appellate court upon service of a notice of appeal and allows the lower court only to grant supersedeas of its own order or to address matters not affected by the appeal. The Court quoted the automatic stay provision of Rule 241(a) and determined that an appeal "divests the lower court or administrative tribunal of jurisdiction over 'matters affected by the appeal,' which necessarily would include a legal malpractice cause of action that is based on the outcome of the appealed verdict." *Stokes-Craven,* 416 S.C. at 534, 787 S.E.2d at 494. *Stokes-Craven* says nothing about whether a supersedeas granted in the Court of Appeals continues to apply when the case is certified from the Court of Appeals to the Supreme Court.

Lancaster v. Georgia-Pacific Corp., 403 S.C. 136, 742 S.E.2d 867 (2013), is also inapposite. In *Lancaster*, the parties asked the Supreme Court for a stay of all deadlines relating to a petition for a writ of certiorari because the parties were preparing a settlement agreement for approval by the circuit court. The Court noted that Rule 205 vests exclusive jurisdiction over an appeal in the appellate tribunal and took the opportunity to remind the bench and bar "that action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this Court. The parties must first seek to have the matter remanded to the lower court." *Lancaster,* 403 S.C. at 138, 742 S.E.2d at 868.

Like *Stokes-Craven, Lancaster* says nothing about whether a supersedeas granted in the Court of Appeals continues to apply when the case is certified from the Court of Appeals to the

Supreme Court.

In *Graham v. Graham*, 390 S.E.2d 469, 301 S.C. 128 (1990), the family court had superseded its own order requiring a father to pay the son's college expenses and had issued an order that could have been interpreted to reverse its order requiring the father to pay. The Supreme Court explained the purpose of supersedeas and remanded the case to the family court for clarification. Nothing in *Graham* suggests that a supersedeas granted in the Court of Appeals continues to apply when the case is certified from the Court of Appeals to the Supreme Court.

BREDL further argues that Rule 204(b) transfers jurisdiction but does not nullify existing orders. Return at 5. BREDL does not cite any authority supporting its claim. Instead, BREDL states that a combined reading of the above case law and Rule 241 indicates that the stay remains in effect following certification unless specifically lifted by this Court. *Id*. Dominion strongly disagrees. As shown above, the cases cited by BREDL do not apply to the present facts nor do the cases provide any assistance in interpreting Rule 204(b)'s meaning. Rule 204(b) provides, "[t]he effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for **all purposes**." (emphasis added). The inclusion of "all purposes" in the Rule indicates that this Court receives jurisdiction over the entire case, meaning orders from the lower courts do not apply.[4] Accordingly, because this Court has not issued a stay of its own, and no automatic stay applies under Rule 241(b), the stay issued by the Court of Appeals while it had jurisdiction is no longer in effect.

II. If The Court Determines That The Stay Order Remains Effective, The Court Should Vacate The Stay Order Because Continued Enforcement Is Not Justified.

If this Court determines that the Stay Order remains in effect, Dominion respectfully

[4] There appear to be two exceptions to this rule: (1) the lower court may stay its own ruling, at least before the notice of appeal is filed; and (2) the lower court has authority to issue orders in matters not affected by the appeal.

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. Motion at 6-8. Moreover, Rule 241(c)(4) explicitly allows a superior court to revoke a stay order granted pursuant to Rule 241(c)(1). For the reasons detailed in the Motion and described below, the continued enforcement of the Stay Order is unwarranted.

a. The Stay is Unwarranted Because There Will be No Irreparable Impacts From the Project.

BREDL alleges that the Project will cause "irreparable environmental damage" because of its purported "environmental and social impacts" that "cannot simply be undone by later abandoning [the Project]." Return at 2, 8. But this argument misses the mark because the purported environmental and social impacts constituting the "irreparable harm" BREDL will suffer if Dominion begins construction on the Project can be relieved by the Court if BREDL prevails on appeal.

In addition, BREDL asserts that, "[b]y their very definition, these "permanent impacts" are irreversible alterations to protected aquatic resources." *Id*. at 8. The ALC expressly rejected this argument. The "permanent impacts" discussed in the Project documents assume the Project will remain in place and operating. BREDL acknowledged that there is a difference between "permanent" and "irreversible" impacts. At the March 19, 2024 hearing before the ALC, Judge Anderson posited to BREDL's counsel, "let's say you bury a pipeline on high ground. Well, if you leave it there, it's permanent. But you can go back and dig it up and restore the areas, so that's not irreversible." In response to this example, BREDL's counsel responded, "Right."[5]

In other words, if Dominion begins construction of the Project, and BREDL prevails on its

[5] Dominion's Return to BREDL's Pet. for Writ of Supersedeas, Ex. G., Tr. at 8:8-13; R. at 1552.

appeal, Dominion could abandon or remove installed segments of the Project and restore any affected areas. BREDL presented no evidence to suggest that "permanent impacts" from the Project are irreversible. "BREDL has not supported this assertion with law or facts, and Dominion disputes this assertion. Importantly, BREDL has not provided affidavits to support its assertion." R. at 1266. BREDL submitted no affidavits or other sworn statements from individuals qualified to opine on potential impacts, nor explained why the purported environmental and social impacts could not be remedied if BREDL prevails. Instead, BREDL relies on "broad, conclusory arguments that are not supported by citations to facts or law." R. at 1358.

Dominion, however, submitted an affidavit with its Motion from an individual qualified to speak to Dominion's ability to restore affected areas should BREDL prevail on the merits of its appeal. Dustin Hoey, a licensed Professional Engineer in South Carolina and Dominion's Director of Engineering and Construction, stated that Dominion can abandon installed segments of the Project and restore affected areas if BREDL prevails.[6] Mr. Hoey further explained some of the requirements with which Dominion would comply to restore impacted areas. *Id*. BREDL's Return offered no affidavits or sworn statements from qualified experts to refute Mr. Hoey.

Because BREDL did not (and cannot) show that allowing Dominion to begin constructing the Project during the pendency of this appeal will make it impossible for the Court to grant effectual relief if BREDL prevails, the continued stay is not necessary to prevent any contested issue from becoming moot. *See* Rule 241(c)(2). Accordingly, Dominion respectfully requests that the Court vacate the Stay Order.

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[6] Motion, Attach. N, Hoey Aff. ¶ 5.

III. <u>The Court Should Consider the Affidavits Attached to and Cited in Dominion's Motion.</u>

Dominion provided 16 affidavits in support of its Motion to address factual disputes concerning the increasing harm caused by the continuing enforcement of the Stay Order. For the reasons detailed below, Dominion respectfully requests that the Court carefully consider the affidavits.

a. Because of the Factual Dispute about the Impact of the Supersedeas, Dominion Submitted a Motion Supported by Affidavits Consistent With Rules 241(d)(3) and 241(d)(4)(A).

Rules 241(d)(3) and 241(d)(4)(A) collectively require a person seeking an order to lift an automatic stay or granting a writ of supersedeas to file a written petition and, if facts are subject to dispute, to provide affidavits or other sworn statements supporting the petition. Although there is no automatic stay here, Dominion is asking the Court to vacate (or lift) the Stay Order if the Court determines that the Stay Order remains effective. Accordingly, Dominion drafted its Motion to comply with Rules 241(d)(3) and 241(d)(4)(A).

There is no doubt that facts are in dispute here. In its Return, BREDL stated that Dominion failed to present new evidence or changed circumstances warranting a reconsideration of the Stay Order and that Dominion did not identify a material change in circumstances since the Court of Appeals granted the Stay Order. Return at 6. This is not true. As the 16 affidavits show, the delay caused by the continued enforcement of the Stay Order is causing concrete and immediate harms. Motion at 6-8. Each day the Stay Order remains in effect, individuals, communities, developers, and customers experience economic and developmental setbacks as a direct result of the inability to access necessary energy service. Motion at 7. Despite not offering any affidavits or sworn statements countering Dominion's affiants, BREDL nonetheless argues that there are no changed circumstances warranting a reconsideration of the Stay Order. Return at 6. BREDL's refusal to

acknowledge the severe impacts caused by the continued enforcement of the Stay Order confirms a significant ongoing factual dispute. Accordingly, Dominion properly supported its Motion with affidavits pursuant Rules 241(d)(3) and 241(d)(4)(A).

b. The Affidavits Do Not Constitute Improper Extra-Record Evidence.

BREDL further argues that the affidavits constitute improper extra-record evidence, Return at 15, citing to Rule 210(h) which notes that the appellate court will not consider any fact which does not appear in the record on appeal. Dominion acknowledges Rule 210(h) but notes two crucial distinctions here.

First, as discussed above, Dominion submitted the affidavits in support of its Motion pursuant to Rules 241(d)(3) and 241(d)(4)(A) to address the ongoing factual dispute concerning the impacts of the continued enforcement of the Stay Order. It is therefore implausible that this Court would be required to disregard the affidavits that Dominion offers to support its Motion consistent with these rules.

Second, the affidavits are specifically related to the impacts of the Stay Order, but do not address the merits of the appeal (*i.e.*, the issuance of the Certification). Dominion offered the affidavits to support its contention in the Motion that continued enforcement of the Stay Order has increasingly negative impacts on a multitude of individuals and organizations, not to add facts to the already overwhelming evidence supporting the issuance of the Certification.

c. BREDL Offers Contradictory Arguments Concerning The Validity Of The Affidavits.

BREDL makes two arguments related to the affiants that contradict the position BREDL itself has taken. The first is that the affiants lacked established qualifications to render their opinions. Return at 16-17.

As an initial matter, Dominion notes that the affidavits are not opinion. These affiants are

individuals describing their own experience as a result of Dominion's inability to provide gas service. Even if the statements were opinions, however, BREDL's position is hypocritical. BREDL states that many of the affidavits contain opinions on purportedly complex matters such as economic impacts, regional development forecasts, energy demand projections, and environmental consequences without establishing the affiants' qualifications to render such opinions. Return at 16. BREDL further notes that under South Carolina law, opinion testimony requires proper qualifications. But BREDL does not address that its lone sworn statement supporting the Petition for Writ of Supersedeas lacks even a shred of proper qualification.

In support of its Petition for Writ of Supersedeas filed with the Court of Appeals, BREDL provided a single generic verification from Gail Kathy Andrews. R. at 1342-1343. Although she previously testified that she owns property bordering Jefferies Creek and that she and her family have used neighboring waters to boat and fish, Ms. Andrews has no specialized education or experience qualifying her to opine on highly technical issues relating to natural gas pipeline engineering or environmental impacts. *Id*. Yet BREDL now questions the qualifications of Dominion's affiants who have firsthand knowledge of the negative impacts of continuing enforcement of the Stay Order. Simply put, BREDL cannot stand behind Ms. Andrews statement while at the same time criticizing Dominion's affiants for purportedly lacking sufficient qualifications to describe the impacts of the Stay Order on their interests.

BREDL's second contradictory point relates to the affiants' availability for cross-examination (or lack thereof). Return at 15-16. During proceedings before the ALC and Court of Appeals considering BREDL's Petition for Writ of Supersedeas, Ms. Andrews was not made available for cross-examination. Dominion, however, made its sole affiant available for cross-examination before the ALC. Nothing in Rule 241 requires the Court to make the affiants available

for cross-examination. Indeed, because the affidavits do not focus on the merits of the appeal but instead address the ongoing factual dispute concerning the impacts of the Stay Order, and because BREDL offered no affidavits or sworn statements contradicting Dominion's affiants, cross-examination is unnecessary here.[7]

d. Zachary West is a Highly Credible Witness.

BREDL again attacks the credibility of Dominion witness Zachary West. Return at 10-11. At the time of the hearing, Mr. West was the Manager of Strategic Planning for Gas Operations.[8] BREDL argues that Mr. West's testimony fails to meet basic standards for reliability and that "[n]o court would find that Dominion has demonstrated economic harm based on testimony from a witness who, by his own admission and his counsel's concession, lacks the qualifications to opine on the very matters at issue." *Id*. at 11. Mr. West initially estimated that the delay would cost Dominion $5.3 million over a three-year period.[9] That number has since increased.[10]

Neither BREDL nor any person ever contradicted Mr. West's original testimony or cost estimates. Indeed, 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. R. at 1529; *see also Stoney v.*

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[7] Dominion acknowledges that the Court has the discretion to schedule a hearing and provide the parties an opportunity to cross-examine affiants. Should the Court disagree with Dominion and determine that cross-examination of affiants is necessary here, Dominion respectfully requests that Ms. Andrews be made available for cross-examination concerning BREDL's Petition for Writ of Supersedeas.

[8] Mr. West's current title is Manager of Engineering Projects, where he is responsible for the design and construction of pipeline projects in DESC Gas's Central Division (Columbia and Aiken).

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

[10] See Motion to Clarify or Vacate Attach. N, Hoey Aff. ¶ 4 (Explaining that the circumstances underlying Mr. 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.).

Stoney, 422 S.C. 593, 595 (2018)("[A] trial judge is in a superior position to assess witness credibility."). Accordingly, BREDL's broad assertion that no court would find that Dominion has demonstrated economic harm based on purportedly unqualified testimony is directly contradicted by the ALC's factual findings.

IV. Dominion And SCDES Prioritized Public Participation Throughout The Regulatory Process.

BREDL further asserts that Dominion somehow exploited the COVID-19 pandemic to minimize public participation, especially of elderly residents and residents without internet access, throughout the regulatory process. Return at 13. To support this claim, BREDL oddly highlights a decision by SCDES (not Dominion) to hold a virtual public hearing on the Certification to facilitate increased attendance and to adhere to social distancing protocols because of COVID-19 concerns. *Id.* at 14. BREDL acknowledges that SCDES provided a call-in number to increase participation, which further shows SCDES' efforts to increase public participation. *Id*.

BREDL's accusations fail to acknowledge several important facts confirming SCDES' and Dominion's significant efforts to foster public participation in the regulatory process. On June 8, 2021, SCDES issued a 15-day public notice of Dominion's application for the Project. *See* Tr. at 158-159, R. at 647, line 10 – p. 648, line 3; *see also* Respondents' Ex. 1 at Section IV, R. at 929-954. That comment period expired on June 23, 2021. *Id*. In response to requests for a public hearing and to extend the comment period, and to address concerns about environmental justice, SCDES held a virtual public hearing at 6:30 p.m. on October 14, 2021. *See* Tr. at 176-181, R. at 665, line 16 – p. 670, line 1; *see also* Respondents' Ex. 1 at Section IV, R. at 929-954. Notice of this hearing was included on SCDES' project webpage, published on SCDES' public notice webpage, and published in the Florence Morning News on September 25, 2021. Tr. at 178-179, R. at 667, line 18 – 668, line 23.

SCDES created an informational webpage for the Project, including a description of the Project and Certification review process, updated application materials, and copies of comments received during the initial public comment period. *Id*. at 178, R. at 667, lines 6-25. SCDES added a fillable form to its Project website so interested parties could pre-register to speak at the public hearing. SCDES also notified parties that requested a hearing, as well as Dominion, of the hearing dates. *Id*. Moreover, SCDES' public participation and environmental justice staff distributed a flyer discussing the Project and public hearing to two local library branches (Pamplico and Johnsonville). *Id*. at 178-179, R. at 667, line 21 – 668, line 7. One of SCDES' Public Participation Coordinators contacted the Manager/Administrator of the Town of Pamplico, Mr. Edwin P. Rogers, to share information about the hearing. *Id*. at 179, R. at 668, lines 7-11.

Moreover, after the public hearing, SCDES posted a recording of the public hearing on its Project webpage as soon as it was available and opened an additional 15-day public comment period after the public hearing. *See* Tr. at 176-181, R. at 665, line 16 – p. 670, line 1; *see also* Respondents' Ex. 1 at Section IV, R. at 929-954. As demonstrated by the SCDES Staff Assessment, SCDES (and Dominion) reviewed and considered comments received via letter, email, voicemail, phone, and the public hearing. *Id*. This comprehensive approach ensured that all stakeholders had ample opportunity to voice their interests or concerns and provided transparency throughout the review process.

Dominion also voluntarily conducted its own environmental justice review using publicly available tools, which identified higher low-income and minority populations in the Project vicinity. Tr. at 291-292, R. at 780, line 9 – p. 781, line 6. It found a "moderate risk" for environmental justice issues at the Project location. Tr. at 294, R. at 783, lines 9-25. Dominion also acknowledged that it condemned property to enlarge the easement, including heirs'

property.[11] Tr. at 265, R. at 754, lines 6-14. Based upon the environmental justice considerations, Dominion performed its own targeted outreach. Tr. at 291-292, R. at 780, line 9 – p. 781, line 6. For example, with respect to owners of potential heirs' properties, Dominion sent contact information for organizations that could help them understand their rights as heirs' property owners and to obtain clear title to their property. *Id*. Dominion also held at least one open house event, and contacted area churches to discuss the Project, understanding that local churches can be a good point of contact within the local community. *Id*. This targeted outreach demonstrates Dominion's commitment to addressing the interests and concerns of all affected communities.

BREDL further argues that Dominion failed to adequately assess alternatives that would avoid impacts to wetlands and streams. Return at 12. Dominion explained at length in its Final Brief its extensive consideration of alternatives.[12] Without rehashing that lengthy analysis here, the record shows that Dominion evaluated three off-site alternatives, one "No Action" alternative, and two on-site installation alternatives. R. at 1301-1304. In its order denying BREDL's Writ of Supersedeas, the ALC noted Dominion's consideration of several alternatives and concluded that "the evidence established that potential feasible alternatives were adequately considered under [the] regulations in this case." R. at 1313.

Finally, in attacking Mr. West's credibility, BREDL insinuates that a reasonable alternative to the Certification is for Dominion to continue to manage its operations using its existing 8-inch pipeline, which has been supplemented with LNG since 2019. Return at 10. However, as the affidavits show, this is clearly not a viable alternative for the individuals and businesses negatively

[11] Heirs' property refers to land that is jointly owned by descendants of a deceased individual who did not leave a will, resulting in a form of ownership known as tenancy in common.

[12] Final Brief of Respondent Dominion Energy at 11-22.

impacted by the Stay Order. The inability to move forward with the Project is precisely why the individuals and businesses are suffering economically. Further, Dominion is unable to satisfy its duties as a regulated natural gas utility in South Carolina. South Carolina's regulations governing the adequacy of natural gas service state that "[t]he source of supply and transmission facilities for gas, and/or production and/or storage capacity of the gas utility's plant, supplemented by the gas supply regularly available from other sources, must to the extent reasonably practicable, be sufficiently large to meet all reasonably expectable demands for firm service, unless otherwise authorized by the commission." S.C. Code Ann. Regs. 103-463. The continued enforcement of the Stay Order precludes Dominion from meeting both current known demands and the reasonably expected demands for firm service. Accordingly, Dominion respectfully asks this Court to lift the Stay Order if it determines the Stay Order is still effective.

V. 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 Order remains in effect, Dominion respectfully requests, pursuant to Rule 241(c)(3), that any continued enforcement be conditioned on the posting of an appropriate supersedeas bond. As previously established before the ALC[13] and reiterated through updated information submitted with the Motion,[14] 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 the natural gas supply to communities in the absence of the Project. Motion at 10. These costs are not speculative; they are based on actual expenditures and updated projections that reflect worsening conditions, and

[13] 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.

[14] *See* Motion, Att. A – P.

ultimately will be borne by ratepayers if Dominion is not permitted to proceed with construction. Likewise, if the bond is issued, that bond would help mitigate the costs that otherwise would be shifted to ratepayers, many of whom reside in the local communities near the Project.

Accordingly, if the Court determines that the Stay Order should remain in effect, Dominion respectfully requests that BREDL be required to post a supersedeas bond in an amount no less than $5.3 million, which was Dominion's initial, non-inflation-adjusted projected cost 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 respectfully submits that the Court of Appeals' Stay Order is no longer effective. BREDL's arguments that the Stay Order, by default, remains in effect throughout the appeal pursuant to Rule 241(a) and purported South Carolina Supreme Court precedent are baseless and factually incorrect. Continued enforcement of the Stay Order would result in substantial and escalating harm to Dominion and the communities it serves. If the Court determines that the Stay Order remains effective, the Court should condition continued enforcement on BREDL's posting of a supersedeas bond. Accordingly, Dominion respectfully requests that this Court grant the Motion.

[Signatures on following page]

Dated: May 2, 2025

Respectfully submitted,

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