THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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Appellate Case No. 2021-000219
Administrative Law Court Case No. 18-ALJ-0443-CC

Colonial Pipeline Company .....Respondent,

v.

South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County..... Appellants.

FINAL REPLY BRIEF OF APPELLANTS AIKEN COUNTY AND LAURENS COUNTY

Walter H. Cartin, SC Bar #78405
J. Evan Phillips, SC Bar #103679
PARKER POE ADAMS & BERNSTEIN LLP
P.O. Box 1509 (29202)
1221 Main Street, Suite 1100
Columbia, South Carolina 29201
(803) 255-8000; (803) 255-8017 (fax)
waltcartin@parkerpoe.com
evanphillips@parkerpoe.com

J. Madison T. Felder, SC Bar #100606
PARKER POE ADAMS & BERNSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
madisonfelder@parkerpoe.com

Attorneys for Appellants Aiken County and Laurens County

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Page(s)

Statutes

INTRODUCTION

Colonial agrees that the primary issue is whether its pipeline is an "industrial plant," as that term is used in the Exemption.[1] Colonial admits that it is not a manufacturer and its pipeline does not engage in any production. Colonial admits it does not even refine the petroleum products that its pipeline transports. Yet, Colonial argues its pipeline constitutes an "industrial plant."

To arrive at this conclusion, Colonial does not put forth one proposed meaning of this term. Instead, Colonial proposes an overall interpretation of the Exemption that ignores some words all together, such as "industrial," "manufacturer," "production," and "greige mill," and hyper focuses on terms not found within the statutory text, such as "physical plant," "bulk plant," "industrial bonds," and even "industrial or business park." Colonial's proposed interpretation is a quintessential example of a forced construction that improperly expands a statute's application.

If Colonial's (and the ALC's) interpretation of the Exemption is adopted, then every single business in South Carolina that owns pollution control equipment will be entitled to claim the Exemption. The Counties' and the Department's interpretation, on the other hand, applies the Exemption to all companies that operate "industrial plants"—i.e., manufacturers and other substantive producers. This interpretation gives effect to every term, harmonizes the statutory language, and applies the Exemption to only those businesses contemplated by the statutory text.

Rather than acknowledge and confront the Counties' and the Department's interpretation, Colonial mischaracterizes each party's position by claiming that the parties argue the term "industrial plant" is strictly limited to facilities operated by manufacturers. This is not true. The Counties and the Department have consistently maintained throughout this case that both manufacturers and other substantive producers are entitled to the Exemption, but not a

[1]Capitalized terms in this Reply that are not otherwise defined have the same meaning ascribed to them in Aiken County's and Laurens County's Brief.

transportation pipeline that does not manufacture, produce, or even refine a single product. The plain language of the Exemption mandates this conclusion. The Exemption expressly limits its availability to "industrial plants," makes reference to "manufacturers," identifies a "greige mill" as an example of a qualifying facility, and instructs that the value associated with a piece of equipment's "production" component is not eligible for the Exemption.

Colonial also characterizes its pipeline operations in a mutually exclusive manner, depending on which part of the Exemption Colonial is analyzing. When analyzing whether its pipeline constitutes an "industrial plant," Colonial strenuously argues that it actively engages in "processing" and "output" activities. Colonial goes so far as to say that even if an "industrial plant" requires some form of production, then Colonial's pipeline operations are sufficient. But, when Colonial addresses the applicability of the Exemption's dual purpose provision to its property, Colonial—all of a sudden—engages in no processing or production activities of any kind. Colonial cannot have it both ways.

However, the Court need not attempt to reconcile Colonial's contradictory arguments. The Record, along with Colonial's repeated admissions, conclusively show that Colonial does not engage in any manufacturing, production, or refining activities. (*E.g.,* Tr. 45:4–6; Tr. 121:1–14; Tr. 162:17–19; Am. Order 31; R. 1486, 1562, 1603 & 0111; Colonial's Br. 29–32). For these reasons, and as explained below, the ALC's decision to grant the Exemption to Colonial must be reversed.

ARGUMENTS

I. COLONIAL'S PIPELINE IS NOT AN "INDUSTRIAL PLANT."

Colonial's proposed interpretation of the Exemption is so broad that, if adopted by this Court, every single South Carolina business owning pollution control equipment would be eligible for the Exemption. Colonial's proposed interpretation does not comport with standard rules of

statutory interpretation, let alone South Carolina's well-settled rule that tax exemption statutes must be strictly construed against the claimed exemption. Therefore, Colonial's proposed interpretation that its pipeline constitutes an "industrial plant" must be rejected.

The Exemption is available to only those business that operate an "industrial plant." Based on the plain meaning of these terms, as well as the accompanying statutory text, an "industrial plant" is necessarily limited to the physical location where manufacturing or production activities take place. The Exemption's terms must be given their plain and ordinary meaning *without resort to subtle or forced construction to* limit *or expand* the statute's operations. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). And, because the Exemption is a tax exemption statute, the statutory terms must be strictly construed against the claimed exemption. *See, e.g., Berkeley Cty. Sch. Dist. v. S.C. Dep't of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 912, 919 (2009).

Colonial expended considerable effort in its Brief mischaracterizing the Counties' and the Department's interpretation of the Exemption, all in an effort to side-step the term "industrial." Colonial begins its arguments by stating "the major substantive issue before the Court is whether Colonial's operations constitute an 'industrial plant' in South Carolina." (Colonial's Br. 17). Then, Colonial later states "[t]he sole issue before the court is whether [Colonial's operations] constitute a plant." (*Id.* at 20).

To reach the conclusion that the Court need only determine whether Colonial's pipeline is a "plant" (without regard to whether it is an "industrial plant"), Colonial points to one exchange between the Department's counsel and the ALC at the hearing on the parties' cross-motions for summary judgment. (*Id.* at 18). Irrespective of the Department's counsel's oral statements prior to the trial of this case, the Counties most certainly have not conceded that Colonial's operations are "industrial." And, the Department made clear at that hearing, and at every point thereafter, that it

denied Colonial's request for the Exemption because Colonial's pipeline does not constitute an "industrial plant." (*See e.g.,* Stip. of Facts ¶¶ 30 & 31; Tr. 310:14–16; 345:12–13; R. 2465, 1751, 1786; *see also* Department's Br. 12–19).

To be very clear, the statutory term at issue is "industrial plant." It is not "plant" or "physical plant," as Colonial suggests. Simple logic instructs that "industrial plant" cannot be construed without giving effect to the word "industrial." When both words are interpreted together, the plainest, most common meaning of "industrial plant" is the physical location where manufacturing or production activities take place. The Exemption's express reference to manufacturers, the dual purpose provision's instruction to discount a piece of equipment's production value, and the Exemption's use of a greige mill to illustrate a qualifying facility all further support this interpretation.

A. The Plain, Ordinary Meaning of "Industrial Plant" Means the Physical Location where Manufacturing or Production Activities Take Place.

Colonial does not offer one proposed meaning for "industrial plant." Instead, Colonial glosses over the "industrial" portion of the term entirely, selects broad definitions for "plant" and "physical plant" from three "dictionaries," and then cobbles these definitions together to reach the broadest meaning possible. This is not a legitimate method of statutory interpretation. *See New York Times Co. v. Spartanburg Cty. Sch. Dist. No. 7*, 374 S.C. 307, 310, 649 S.E.2d 28, 29–30 (2007) ("We cannot construe a statute without regard to its plain and ordinary meaning, and this Court may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope.").

For example, Colonial provides Merriam-Webster's definitions for "industry," but Colonial does not analyze any of these definitions or discuss why these definitions are applicable to its pipeline that transports only finished products. (Colonial's Br. 21–22). Colonial simply skips past the definitions and makes the conclusory statement that "[t]he Department conceded that the

extensive Colonial operations were 'industrial.'" (*Id.* at 22). But, if the definitions Colonial provides for "industry" are actually analyzed, it is apparent that Colonial is not an "industry" in the "industrial plant" sense of the term. (*See* Aiken County's and Laurens County's Br. 26–30) (hereinafter "Br."). Merriam-Webster's first listed definition for "industry" is "manufacturing activity as a whole." https://www.merriam-webster.com/dictionary/industry. Accordingly, this is the most common definition for "industry."[2] Colonial does not engage in manufacturing activity.

Next, Colonial offers four of Merriam-Webster's definitions for "plant." (Colonial's Br. 20–21). To reach the conclusion that its pipeline is a "plant," Colonial does not identify Merriam-Webster's most applicable definition of "plant." Instead, Colonial takes the four possible definitions and combines them. Colonial then states that "[t]he definitions are *broad*, and . . . [t]aken together, the definitions indicate a plant *can mean* the overall collection of property necessary to carry on an industrial business, manufacturing, *or a service*." (*Id.* at 21) (emphasis added). In other words, Colonial's proposed definition of "plant" includes "the overall collection of property necessary to carry on a service."

This proposed definition is grossly overbroad. The Exemption is only available for "industrial plants." Colonial's proposed interpretation of "plant" includes every single business that owns a collection of property necessary to perform a service. Under this interpretation, any law firm that owns property necessary to provide legal services is a "plant"; any painter that owns paint brushes necessary to paint someone's home is a "plant"; and any barbershop that owns

[2]Merriam-Webster states that "[t]he senses of each word are organized in one of two possible ways: beginning with the oldest known sense or the most common one." https://www.merriam-webster.com/words-at-play/how-to-use-the-dictionary/definitions (last visited Sept. 28, 2021). With respect to "industry," Merriam-Webster informs the reader that the first known use of "industry" is the meaning defined at sense 2 (i.e., "diligence in an employment or pursuit"). https://www.merriam-webster.com/dictionary/industry (last visited Sept. 28, 2021). Thus, the definitions for industry are arranged beginning with the most common definition.

scissors necessary to cut someone's hair is a "plant." Colonial's interpretation of "plant" is virtually limitless. The businesses that would qualify as a "plant" under Colonial's proposed interpretation is only limited by whether or not the business owns "a collection of property." Given that the General Assembly chose to expressly limit the Exemption's applicability to "industrial plants," Colonial's proposed interpretation cannot be correct.

Colonial also relies on Wikipedia. Even assuming *arguendo* that Wikipedia is a credible, authoritative source, Colonial admits that "Wikipedia does not have an independent definition of 'industrial plant.'" (Colonial's Br. 22). Colonial, instead, points to the Wikipedia page for an entirely different term ("physical plant") to show that an "industrial plant" does not always equal a manufacturing plant. (*Id.*). Colonial's arguments should be rejected for the simple reason that it is using the Wikipedia page for a wholly different term. But, if that were not enough, the types of "physical plants" contemplated by Wikipedia do not include pipelines or other transportation companies—they all deal with plants that are involved in substantive production activities that take one product and turn it into something new. *See* https://en.wikipedia.org/wiki/Physical_plant (last visited Sept. 28, 2021) (offering nuclear power plants, utility plants, and water treatment plants as examples of "physical plants"). Colonial's pipeline simply transports already refined petroleum products. It does not take a product and turn it into anything new. Even under Wikipedia's "definition" of "physical plant," Colonial does *not* operate a plant.

Finally, Colonial uses the American Heritage Dictionary. Again, however, it is only to offer the definition of "plant" with no regard to the term "industrial" or "industry." This is unsurprising. All of the American Heritage Dictionary's definitions for "industrial" expressly refer to "manufacturing." (*See* Br. 29). Even if the Court focuses only on the word "plant," as Colonial does, the American Heritage Dictionary's most common definition still shows that a plant must

engage in manufacturing or production activities. The most common definition[3] of "plant" is "a building or group of buildings for the **manufacture of a product**; a **factory**; works in an auto plant." https://www.ahdictionary.com/word/search.html?q=plant (last visited Sept. 28, 2021) (emphasis added).

In sum, when considered in context of the ultimate term this Court must construe, the plain, common meaning of the terms "industry," "industrial," and "plant" show that an "industrial plant" means the physical location where manufacturing or production activities take place. Colonial does not engage in any manufacturing or production activities. Accordingly, Colonial's pipeline is not an "industrial plant." Therefore, Colonial is not eligible for the Exemption.

B. The Exemption's Remaining Text Further Supports Finding that "Industrial Plant" Means the Physical Location Where Manufacturing or Production Activities Take Place.

In addition to expressly limiting the eligibility for the Exemption to "industrial plants," the Exemption (1) explicitly references *manufacturers*; (2) identifies a *greige mill* as an example of a qualifying facility, and (3) contains the dual purpose provision, which expressly limits the eligible value to the difference in equipment's *production value* and pollution control value. All of these statutory references contained within the Exemption further inform the definition of the term "industrial plant," and are strong evidence that the Exemption is only available to companies that engage in manufacturing or production activities. Colonial's proposed interpretation renders the statutory terms "manufacturer," "purpose of production," "production capacity," and "greige mill" entirely meaningless and superfluous. Therefore, Colonial's interpretation must be rejected.

Colonial argues that the reference to "the property of any manufacturer *or company*" within the text of the Exemption is proof that Colonial's pipeline qualifies as an "industrial plant."

[3]The American Heritage Dictionary also arranges definitions by "the most commonly sought meaning first." https://www.ahdictionary.com/word/howtouse.html (last visited Sept. 28, 2021).

(Colonial's Br. 23). Specifically, Colonial states that it is "reasonable to conclude the breadth of the word 'company' is meant to capture those operations that do not fall within the definition of manufacturer to incentivize as many industrial polluters as possible to acquire pollution control equipment and thereby limit the possibility of environmental contamination." (Colonial's Br. 24–25).

However, it is unreasonable to conclude that the Exemption's sole use of "or company" is intended to make companies that do not manufacture or produce anything eligible for the Exemption. "[T]he legislature intends to accomplish something by its choice of words, and would not do a futile thing." *Gordon v. Phillips Utils, Inc.*, 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005). The Exemption states that DHEC, at the request of the Department, is required to "investigate the property of any **manufacturer or company** eligible for the exemption." S.C. Code Ann. 12-37-220(A)(8) (emphasis added). Every manufacturer is a company. Thus, the term "manufacturer" must inform the term "company," or there would have been no reason for the General Assembly to have used "manufacturer." *See Gordon*, 362 S.C. at 406, 608 S.E.2d at 427; *see also Duke Power Co. v. Laurens Elec. Co-op., Inc.*, 344 S.C. 101, 106, 543 S.E.2d 560, 563 (Ct. App. 2000) ("When construing a statute, we must presume the legislature did not intend a futile act.")

Colonial's proposed meaning of "company" improperly focuses on one statutory term, and renders a number of the Exemption's terms entirely meaningless. Statutes cannot be interpreted by concentrating on isolated phrases within the statute—they must be read as a whole. *Centex Intern, Inc.* 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) ("[W]e read the statute as a whole and should not concentrate on isolated phrases within a statute.") (internal quotations omitted); *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); *see also CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("[We must read the statute so 'that no word, clause,

sentence, provision or part shall be rendered surplusage, or superfluous.'") (quoting *State v. Sweat*, 379 S.C. 376, 665 S.E.2d 645, 650 (Ct. App. 2008)).

Moreover, Colonial mischaracterizes the Counties' position by stating that "appellants contend that 'company' refers to utilities." (Colonial's Br. 24). The Counties have never contended that "company" only refers to utilities. Rather, "company" most likely refers to companies that do not specifically engage in manufacturing, but still engage in production by turning raw goods into useable products. This would include a number of other companies, such as a mining company or an oil refinery. Or, "company" could simply refer to a parent company of a manufacturer that has the right to claim the Exemption on the behalf of a wholly owned subsidiary. (*See* Br. 33).

Colonial chose not to address this interpretation advanced by the Counites. Unlike Colonial's proposed interpretation of "company," the Counties' interpretation does not expand the Exemption's application to *all* companies that own property in South Carolina. Rather, the Counties' interpretation assigns to each statutory term its plain, ordinary meaning and gives each statutory term full effect. Therefore, Colonial's proposed interpretation must be rejected, and the ALC's decision that Colonial's pipeline is an "industrial plant" must be reversed.

C. Colonial Does Not Engage in Production Activities, and Handling Transmix, Injecting DRA, and Removing Sting Does Not Change This Conclusion.

To further argue that its pipeline should be considered an "industrial plant," Colonial states that even under a narrow construction of "industrial plant" requiring that a company "be engaged in some form of production, the undisputed facts show that Colonial processes the products it transports to create an output – 185,000 barrels per day." (Colonial's Br. 23). Put simply, Colonial argues that if production is necessary to be an "industrial plant," then Colonial's operations are sufficient. In support of this position, Colonial states that it "processes transmix into a saleable product, changes [sic] injects DRA into the product being transported, and removes the sting that occurs as a result of transportation." (*Id.*). Colonial's handling of Transmix, injection of DRA, and

removal of sting are not production activities. None of these activities involve Colonial taking a product and turning it into anything new.

As an initial point on this issue, Colonial has repeatedly conceded that it does not engage in production. (Colonial's Br. 29 ("[A]ll parties agree that Colonial is **not engaged in production**.") (emphasis added); *id.* at 32 ("Colonial is not a manufacturer, and **engages in no production**.") (emphasis added); *id.* ("Colonial, the ALC, the Counties and the Department all agree – **Colonial performs no 'production' as it is a transportation company** . . .") (emphasis added)).[4] Therefore, Colonial should not be permitted to now argue that it engages in production, and the Court should reject this line of reasoning.

Additionally, handling Transmix, injecting DRA into the pipeline, and removing sting is not equivalent to "production." As Colonial points out, "production" requires taking one thing and turning it into something new. (*See* Colonial's Br. 30–31 (defining "production" as follows: (1) "[t]he action of making or manufacturing from components or raw materials, or the process of being so manufactured"; (2) "the act or process of producing"; (3) "the method of turning raw materials or inputs into finished goods or products in a manufacturing process"; (4) "the process of goods being made or manufactured; (5) "the act of producing; creation; manufacture"; and (6) "the process of making, harvesting, or creating something or the amount of something that was made or harvested")).

Colonial's handling of Transmix is not a production activity. Transmix results when different petroleum products mix in the pipeline. (Colonial's Br. 7). It is a byproduct when two incompatible petroleum products come into contact with each other. (Tr. 127:14–17; R. 1568). If Colonial only shipped one product at a time, there would be no Transmix. (Stip. of Facts ¶ 6; R.

[4]*See also* Colonial's Mot. Reconsid. 6 ("Colonial is not a manufacturer, and engages in no production."); *id.* at 8 ("[T]he Counties, the Department, and indeed the Court all agree – Colonial performs no 'production' as it is a transportation company . . ."); R. 0762 & 0764.

2462). With respect to dealing with Transmix, Colonial has three options. Colonial can sell the Transmix "as is" to customers. (Tr. 149:3–23; R. 1590). This option does not involve Colonial taking one product and turning it into something new.

A second option is for Colonial to simply reinject it back into the pipeline so long as "the specifications of the product are not being impacted." (Tr. 148:20–149:2; R. 1589–90). In other words, Colonial can reinject the Transmix *so long as it does not create anything new*.

A third option is for Colonial to sell the Transmix to a processor. (Tr. 149:11–13; R. 1590). If Colonial chooses this option, Colonial outsources the Transmix processing to another company. A company that actually turns Transmix into something useful takes it away from Colonial and processes it somewhere else. (Tr. 148:10–16; R. 1589 ("We actually enter into contractual agreements with parties to come in to remove the transmix through trucks and to take it off and to reprocess it.").

Next, Colonial's injection of DRA into the pipeline is not a production activity. There is no evidence that DRA enhanced or even changed the nature of the products Colonial transports. DRA simply cuts down friction loss and allows Colonial to move product faster so that it can generate more revenue. (Tr. 151:22–152:2; R. 1592–93). DRA is the functional equivalent to a lubricant. Colonial's injection of DRA into its pipeline does not create anything new. It is not a production activity.

Finally, the removal of sting is not a production activity. Sting is a technical way of referring to the water that settles to the bottom of Colonial's tanks. (Tr. 159:23–160:1; R. 1600–01). All Colonial has to do to remove the sting is "[j]ust drain it off." (Tr. 160:4; R. 1601). Then, "[i]t goes to a hazardous waste material company to deal with it." (Tr. 160:7–9; R. 1601). Colonial's removal of sting water is the equivalent of taking out the trash. It is not a production activity.

D. The Unrelated Statutes and Case Law Offered by Colonial Do Not Show that Colonial's Pipeline Constitutes an "Industrial Plant" under the Exemption.

Colonial also offers a number of other statutes and cases, some from South Carolina and many from out-of-state, to further support its argument that Colonial's pipeline meets the statutory requirements for the Exemption. However, no statute or case cited by Colonial relates, directly or indirectly, to the Exemption. And, as shown below, no statute or case cited by Colonial sheds any light on the meaning of "industrial plant" and whether Colonial's pipeline qualifies for the Exemption.

1. Qualifying for Industrial Revenue Bonds is Not Relevant to Determining whether Colonial's Pipeline is an Industrial Plant.

Colonial argues that because it qualifies for "industrial revenue bonds" under Section 4-29-10, this is proof that its pipeline is an "industrial plant." There are several issues with this argument. First, the definition Colonial provides is for "Project," and not "industrial plant." Second, the statute states explicitly that "[t]his definition is for purposes of industrial revenue bonds only." S.C. Code Ann. § 4-29-10. Third, Colonial fails to provide the remainder of the statutory text, which shows that the following would also be considered a "Project" under Section 4-29-10:

> (c) any enterprise for research in connection with any of the foregoing or for the purpose of developing new products or new processes or improving existing products or processes;
>
> (d) any enterprise engaged in commercial business including, but not limited to, wholesale, retail, or other mercantile establishments; residential and mixed use developments of two thousand five hundred acres or more; office buildings; computer centers; tourism, sports, and recreational facilities; convention and trade show facilities, and public lodging and restaurant facilities if the primary purpose is to provide service in connection with another facility qualifying under this subitem;

S.C. Code Ann. § 4-29-10(3)(c)–(d). Under Section 4-29-10, clothing stores, residential developments, sports fields, and convention centers qualify as a "Project." Thus, whether or not a

particular business constitutes a "Project" under Section 4-29-10 is in no way determinative of whether a particular business is also an "industrial plant."

2. *The Sales Tax Exemption for Pollution Control Equipment is Not Limited to Manufacturers but is Limited to Substantive Producers.*

To show that the Exemption is not limited to companies that engage in manufacturing or production activities, Colonial states that the sales tax exemption under Section 12-36-2120(17) is "limited to manufacturers." (Colonial's Br. 19). This statement is not correct. Section 12-36-2120 exempts from sales tax the "machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale." S.C. Code Ann. § 12-36-2120.

Although manufacturers that purchase pollution control equipment are eligible for this sales tax exemption, the statute's plain language is further evidence that both pollution control equipment tax exemptions are intended for companies engaged in manufacturing *or other production activities*. Both the Exemption and Section 12-36-2120 show a clear intention for the tax exemptions to be limited to the general type of company that takes a product and turns it into something new—not a transportation company.

3. *The Case Law Offered by Colonial is Not Relevant.*

Colonial argues that *South Carolina Public Interest Foundation v. City of Columbia*, 431 S.C. 164, 847 S.E.2d 257 (2020) is helpful for determining the meaning of "industrial plant." It is not. First, Colonial misstates the issue of that case. The issue was not "whether college residential apartment complexes met the definition of an 'industrial or business park.'" (Colonial's Br. 20).[5] Rather, the precise question before the Court was whether or not student "dormitories are

[5]Colonial also states that "Appellants claimed that the word 'industrial' controlled and that commercial residential apartments were residential rather than industrial." (Colonial's Br. 20). This, too, is incorrect. The appellants in that case contended that residential apartments were not "industrial or business." 431 S.C. at 167, 847 S.E.2d at 258.

commercial enterprises that **fall within the definition of 'business.'**" 431 S.C. at 167, 847 S.E.2d at 258 (emphasis added). The term at issue in this case is "industrial plant." It is not "business." Therefore, *South Carolina Public Interest Foundation* is not applicable to the question before the Court.

Next, Colonial offers the North Carolina case *Richards v. Jolley* for assistance with interpreting the meaning of the term "plant." (Colonial's Br. 22–23). This case did analyze Merriam-Webster's broadest definition for "plant" that was adopted by the ALC. However, the question before the court was whether a company's facility—where it *manufactured a product*—was entitled to a cartway that was available for landlocked parcels "engaged in the . . . operating of any industrial or *manufacturing plants*." 208 N.C.App. 436, 440, 703 S.E.2d 467, 469 (2010) (citing N.C. Gen. Stat. §136-69(a)) (emphasis added). The opposing party did not dispute that the business manufactured a product at its facility, but, rather, argued "the term 'plant' requires a manufacturing operation of a certain unspecified size which is larger than petitioners' business." *Id.* at 441, 703 S.E.2d at 470. The court disagreed and found that the plain meaning of "plant" "does not include any qualification as to size of the operation." *Id.* In other words, all the *Richards* court found is that a particular business's manufacturing facility constituted a "plant," regardless of its size. Colonial does not operate a manufacturing facility. Therefore, this case does not support Colonial's argument that its pipeline equates to a plant.

Colonial offers *State of Florida v. Jasonville Port Authority*, 305 So.2d 166 (1974) for the proposition that because a 1974 Florida court found that a food distribution plant constituted an "industrial plant," Colonial's pipeline that transports finished products should also be considered an "industrial plant." (Colonial's Br. 28). However, there are fundamental differences between that case and the present case, and the one similar issue contradicts Colonial's argument.

State of Florida dealt with a constitutional provision authorizing the issuance of revenue bonds and not a property tax exemption. The Court ultimately had to construe the phrase "capital projects for industrial or manufacturing plants" in the context of the term "project," as defined in a statute subsequently enacted by the Florida legislature. Thus, the issue was not whether a food distribution center satisfied the requirements of a law intended only for "industrial or manufacturing plants," but, rather whether it was a "project" eligible for bond financing. *See generally*, 305 So.2d 166, 168–69 (1974).

The relevant Florida constitutional provision permitted certain exceptions to the restriction imposed on the State from giving, lending, or using "its taxing power or credit to aid any corporation, association, partnership, or person." *Id.* at 168 (citing Fla. CONST. Art. VIII, § 10(c)). The exception at issue in the case was for "revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants." *Id.* The *State of Florida* Court explained that a subsequently enacted statute elaborated on the constitutional provision. Relevantly, the Court concluded the following: "[I]t seems clear from a reading of Section 159.27(5), F.S.A. [i.e., the statute defining "Project"], that **the legislature intended the phrase to be liberally construed**." *Id.* (emphasis added).

The Counties were unable to locate a copy of the 1974 version of Section 159.27(5), F.S.A. However, the current version of Section 159.27(5), F.S.A. defines "Project" in a similar manner to Section 4-29-10 of the South Carolina Code. That is, current Section 159.27(5), F.S.A. defines "Project" in exceptionally broad terms an includes "an industrial or manufacturing plant, a research and development park, . . . , a warehousing or distribution facility, a headquarters facility, a tourism facility, a convention or trade show facility, an urban parking facility, a trade center, a health care facility, an education facility, a correctional or detention facility, [and] a motion picture production facility. . . ."

In the present case, the South Carolina General Assembly also subsequently enacted Section 12-37-220(A)(8) to elaborate on the constitutional provision exemption pollution control property from *ad valorem* taxation. However, contrary to the Florida legislature's subsequent actions of broadening what is considered "capital *projects* for industrial or manufacturing plants," the additional provisions set forth in the Exemption show an entirely different intention.

Article X, Section 3 of the South Carolina Constitution provides that the pollution control equipment exemption is available to "all facilities or equipment of industrial plants which are designed for the elimination, mitigation, prevention, treatment, abatement or control of water, air, or noise pollution." Subsequently enacted section 12-37-220(A)(8) narrowed the possible application of the constitutional provision by, among other things, (1) explicitly referencing *manufacturers*; (2) identifying a *greige mill* as an example of a qualifying facility, and (3) implementing the dual purpose provision, which expressly limits the eligible value to the difference in equipment's *production value* and pollution control value. S.C. Code Ann. § 12-37-220(A)(8). These subsequently added terms show an intent to limit the Exemption's applicability to companies that engage in manufacturing or production activities—not to broaden its application as Colonial claims. Moreover, the Exemption is a tax exemption statute and not a bond financing statute. Thus, South Carolina law requires the Exemption's terms be strictly construed, not liberally construed. *E.g., Berkeley Cty. Sch. Dist.*, 383 S.C. at 345, 679 S.E.2d at 919. Therefore, *State of Florida* does not assist the Court in construing the Exemption's language.

Colonial concludes its campaign to force its pipeline into the parameters of an "industrial plant" by stating "[t]here are several sales tax cases in which certain machinery and equipment used by companies which shipped gas (as opposed to extracting or refining gas) were held exempt under the state's sales tax exemption statute for manufacturers." (Colonial's Br. 28). Colonial then goes on to cite two 1950s Alabama cases and one Minnesota case dealing with natural gas

pipelines. Although Colonial failed to offer any explanatory analysis of these cases, Colonial claims in its Brief that these cases stand for the proposition that pipelines were afforded tax exemptions intended for manufacturers. These cases do not support Colonial's position.

The first Alabama case cited by Colonial is *Southern Natural Gas Company v. State*, 261 Ala. 222, 73 So.2d 731 (1953). Colonial states that this case dealt with a tax exemption aimed at only manufacturers. However, the pertinent statute covered "[m]achines used in *mining, quarrying, compounding, processing, and manufacturing* of tangible personal property." 261 Ala. 224, 73 So.2d at 733 (emphasis added). Thus, the statute also applied to many non-manufacturing entities, and the Court actually denied the gas pipeline's exemption request for its compressors. Noting that the compressors clearly were not used in compounding or manufacturing, the Court focused on "whether the compressors [were] used in 'processing' the gas." *Id.* at 226–27, 73 So.2d at 735. After analyzing the dictionary definition of "process," the Court concluded the following:

> Under this definition, it is apparent that the word 'process' is synonymous with the expressions 'preparation for market' and 'to convert into marketable form.' **It is uncontroverted that the gas is 'prepared for market' and in 'marketable form,' that is, in commercially usable form, before it reaches any of the compressors in Alabama. As we see it, the fact that some moisture and distillate are extracted from the gas when subjected to pressure is but an incident of that operation and cannot serve to make of it a step in 'processing' the gas,** within the meaning of that term as used in [the statute].
>
> . . .
>
> **The distribution of gas may be compared to that of unpackaged commodities loaded upon trucks at the factory and delivered to customers. The compressors may be compared to engines in the trucks—they both provide motive power. But, in so providing, neither operates on the product being distributed so as to make it marketable. <u>They are simply methods of transportation, employed because they are the most practical or the most economical means of making delivery</u>. For us to hold that the compressors are used in 'processing' the gas would require, we think, an unwarranted expansion of the ordinarily understood definition of that term**. It seems to us, aside from any other consideration, the fact that gas is delivered in marketable form for

> use at Reform, Alabama, without first going through a compressor station in Alabama, compels a conclusion that the compressors are not used in 'processing' but, instead, 'in the transportation system' of the company, as found by the trial court. And we so hold.

Id. at 227, 73 So.2d at 735–36. (emphasis added).[6]

Thus, the *Southern Natural Gas Company* Court set forth a line of reasoning entirely consistent with the Counties' and the Department's arguments—not Colonial's. Like a natural gas pipeline, Colonial's pipeline "may be compared to that of unpackaged commodities loaded upon trucks at the factory and delivered to customers." Colonial's pipeline, along with its attendant equipment, is simply a method of transportation "employed because they are the most practical or the most economical means of making delivery." And, Colonial's handling of Transmix, injection of DRA, and draining of sting "is but an incident of that operation and cannot serve to make it a step in 'processing'" the already refined petroleum products Colonial transports.

Next, Colonial cites to *State v. Alabama Gas Corporation*, 258 Ala. 356, 62 So.2d 454 (1952). This case dealt with the same statute as *Southern Natural Gas Company*. The precise issue before the court was whether the gas company's regulators were exempt from use tax due to the fact that they were "used in processing" the gas. 258 Ala. at 356–57, 62 So.2d at 455. Notably different than Colonial's equipment and operations, the *Alabama Gas Corporation* Court found that the regulators played a critical role in processing the gas into a product that was "suitable for use by many customers, who could not otherwise use it" if the gas was not first processed by the regulators. *See id.* at 457. Thus, it is logical that the *Alabama Gas Corporation* Court determined the regulators qualified for the use tax exemption. But, the fact that a natural gas company was

[6]On rehearing, the Court did find that pipeline's electric generators were exempt from use tax. *See id.* at 737–39. The Court found that the generators were involved in manufacturing tangible personal property similar to any equipment "used by any electric power company for generating electricity." *Id.* at 737. Colonial does not manufacture or produce anything. Therefore, *Southern Natural Gas Company* supports the Counties' and the Department's position and contradicts Colonial's position.

entitled to claim a use tax exemption on the regulators it used to process natural gas into useable form (when the statute exempted machines used in "processing") is not instructive for determining whether Colonial is an "industrial plant."

Finally, Colonial cites to the Minnesota case *Great Lakes Gas Transmission L.P. v. Commission of Revenue*, 638 N.W.2d 435 (Minn. Sup. Ct. 2002). In that case, the question was whether "the consumption of fuel in compressors along a natural gas pipeline is exempt from use tax as material consumed in industrial production of goods to be sold ultimately at retail under Minn. Stat. § 297A.25, subd. 9 (1994)." 638 N.W.2d at 436. With respect to gas, specifically, the underlying statute stated the following: "The purchase of fuel, electricity, *gas*, steam, and water that is used or consumed directly in agricultural or industrial production is not taxable." Importantly, the Court noted that the natural gas transporter, like the regulators at issue in *Alabama Gas Corporation*, was engaged in "production by refining natural gas at its compressor stations." *Id.* at 440. Colonial admitted that it is does not refine any of the products it ships. (Tr. 162:17–19; R. 1603). Therefore, by virtue of Colonial's own arguments, this case is not applicable to the issues before the Court.

II. THE DUAL PURPOSE PROVISION ONLY EXEMPTS THE VALUE OF THE POLLUTION CONTROL COMPONENT.

Colonial argues that the dual purpose provision is inapplicable because Colonial does not manufacture or produce any products. (Colonial's Br. 29). However, the fact that Colonial does not engage in any manufacturing, production, or refining activities only means that Colonial is not entitled to the Exemption. It does not mean that Colonial is automatically entitled to a 100% exemption on all of its property that is considered pollution control equipment.[7]

[7]Colonial also argues that because the Constitution does not contain the dual purpose provision, the Constitution supersedes the statute. (Colonial Br. 29 n.6). This argument is without merit, and Colonial did not cite any authority for this claim. The specific Constitutional section that provides for the Exemption, Article X, Section 3, states that "[t]he exemptions allowed pursuant to this

Even if Colonial's pipeline is an "industrial plant" (which it is not), then the dual purpose provision must still be applied to Colonial's equipment to determine the value eligible to receive the Exemption. The plain language of the dual purpose provision limits the eligible value to only the value associated with the equipment's pollution control component. The Record shows that there is no value differential between Colonial's property at issue and property that is not capable of controlling pollution and that Colonial would purchase the same equipment even if not required by federal law. (Colonial's 30(b)(6) Dep. 65:7–13; 131:1–22; 132:2–9; 179:3–11; 266:7–9; 291:6–17; R. 1049, 1115, 1116, 1163, 1250, & 1275).

If companies that do not engage in manufacturing or production activities are entitled to the Exemption (which they are not), then the dual purpose provision must be read so that the statute is given full effect. That is, the dual purpose provision expressly limits the eligible value of a particular piece of property to only the value associated with that property's pollution control component. Indeed, even Colonial concedes that "[w]here a manufacturer purchases a $40 million boiler which contains a $2 million pollution control component, only the $2 million would be exempt – not the full $40 million." (Colonial's Br. 30). Yet, Colonial's proposed interpretation of when the dual purpose provision applies would allow Colonial to claim 100% of the property's value as exempt, simply because Colonial does not engage in manufacturing or production. Taken to its logical extreme, Colonial's position is that it would be entitled to claim the full exemption on a piece of property worth $40,000,000 with a $1 pollution control component, *because Colonial does not engage in production*. This interpretation of the dual purpose provision renders the entire provision meaningless with respect to Colonial's property. This interpretation is absurd and

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paragraph *are subject to those terms and conditions that the General Assembly may provide by law*." (emphasis added). The dual purpose provision is simply an additional condition for qualifying for the Exemption that the General Assembly provided by law when it enacted the Exemption.

should, therefore, be rejected. *See, e.g., Duke Energy Corp.*, 415 S.C. 351 at 782 S.E.2d at 593–94 ("It is axiomatic that a statute will not be construed to lead to absurd results. All rules of construction are subordinate to that obvious proposition.") (internal quotation omitted).

Confusingly, Colonial goes on to state that "the overriding issue is whether the Colonial Pipeline industrial plant was a **production facility**." (Colonial's Br. 30) (emphasis added). Then, Colonial offers definitions of "production" from a variety of sources, such as MyAccountingCourse.com, Vocabulary.com, and YourDictionary.com. (*Id.* at 30–31). Colonial's arguments border on non-sensical. Whether Colonial's pipeline is an "industrial plant" is the primary issue before the Court. Whether Colonial's pipeline is a "production facility" is in no way relevant to this case. Colonial makes this statement, and then provides a number of definitions for "production" to show that it is not engaged in production. This entire argument appears to be intended to distract and confuse the Court from the actual issue: whether Colonial's pipeline equates to an "industrial plant" under the Exemption.

Colonial also argues that there is no such thing as a pipeline without coatings, cathodic protection equipment, or automatic shut-off valves "because federal law requires them." (Colonial's Br. 33).[8] This is false. Each of these pieces of equipment have been a part of Colonial's pipeline since the pipeline was first constructed and *before required by federal law*. (Tr. 225–27; *id.* at 236:7–8; R. 1666–68 & 1677; *see also* Br. 17–19). Therefore, it cannot be true that Colonial's pipeline contains these items because they are required by federal law. Colonial's pipeline contains these items because they are necessary for Colonial to operate its pipeline, not because they are required by federal or state law. (*See* Colonial's 30(b)(6) Dep. 65:7–14 (stating that the equipment

[8]Colonial also states that it only applied new pipeline coatings (for which it is seeking the Exemption) "to comply with federal law, which required such repairs." (Colonial's Br. 40). However, Colonial does not offer a citation, and the Record does not contain any evidence supporting this statement.

is not purely for pollution control and that "they serve a function for operating the pipeline"); R. 1049).

Colonial then compares its equipment to a coal-burning power plant's "smoke stacks and other air pollution equipment." However, Colonial's property is not the same. A coal-burning power plant does not need pollution control equipment to perform its primary function of producing power. Rather, it uses pollution control equipment to abate the amount of pollution released into the air, but this equipment offers the plant no additional productive capacity. And, if it does offer additional productive capacity, then the value of the power plant's equipment eligible for the Exemption would be discounted as a result of the dual purpose provision. On the other hand, if Colonial did not have pipeline coatings and cathodic protection equipment, then Colonial would be unable to ship its product as efficiently as it currently does, if it was able to ship its product at all. (*See* Tr. 229:8–13; Colonial's 30(b)(6) Dep. 131:1–21 (stating that the equipment at issue is "part of a total package of things that we must do as an operator . . . to manage and perform our services"); 291:6–17 (stating that it is in Colonial's "best interest to protect the asset and . . . it's a good investment. It makes good financial sense . . . to protect your asset"); R. 1670, 1115, & 1275). Yet, Colonial contends that because it does not engage in production, it is entitled to receive the Exemption on the full value of the property. This cannot be the law.

Next, Colonial spends a number of pages explaining a fundamentally different tax exemption provided by the State of Texas. Colonial's purpose for doing so is not entirely clear, but the Texas exemption is not applicable to this case. Section 11.31(a) of the Texas Tax Code provides a property tax exemption for pollution control property. However, the Texas statute does not restrict the exemption's eligibility to "industrial plants." Rather, the Texas exemption provides that "[*a*] *person* is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly *or partly* as a facility, device, or method for the control

of air, water, or land pollution." Tex. Tax Code. § 11.31(a) (emphasis added). The only statutory limitations related to the property's use is that the exemption is not available for "residential purposes, or for recreational, park or scenic uses." *Id.* Thus, the Texas exemption is *not* limited to "industrial plants." Therefore, the Texas exemption is not proof of anything in this case.

Finally, Colonial offers additional out-of-state cases for the proposition that this Court should permit Colonial to claim a 100% exemption on its equipment because Colonial's equipment is not used to produce a product and other states have held the same for *manufacturers*. (Colonial's Br. 39–40). First, *Commonwealth Edison Company v. Department of Local Government*, 85 Ill.2d 495, 425 N.E.2d 817 (1981) did not deal with a manufacturer, but rather an electric utility company. Second, the relevant statutory terms were "economic productivity" and "productive earning value." *Id.* at 501, 425 N.E.2d at 819. These terms are not at issue in this case. Therefore, this case is not instructive.

Colonial next cites to *International Paper Company v. Board of Environmental Protection*, 737 A.2d 1047 (Me. 1999). The statute at issue provided a property tax exemption for equipment that was "primarily for the purpose" of controlling pollution. 737 A.2d at 1050. All the court held was that one piece of equipment was installed for the primary purpose of controlling pollution and was, therefore, entitled to the exemption, and that the record was incomplete with respect to the second piece of equipment at issue. *Id.* at 1053–55. This case is not relevant.

Perhaps more instructive are the tax exemptions that Colonial applied for in other states that were denied. For example, Tennessee denied Colonial's request for a tax exemption on its pollution control equipment. (Colonial's 30(b)(6) Dep. 35:25; R. 1019). Tennessee's exemption statute is not limited to any particular facility, but eligibility is limited to equipment used "for the *primary purpose*" of controlling pollution. Tenn.Code Ann. § 67-5-604(a) (emphasis added). Georgia likewise denied Colonial's request. (Colonial's 30(b)(6) Dep. 34:1–6; R. 1018). Like

Tennessee's exemption statute, Georgia's exemption statute is not limited to any particular facility, but eligibility is limited to "property used in . . . *any facility* . . . for the *primary purpose*" of controlling pollution. O.C.G.A. § 48-5-41 (emphasis added). Furthermore, New Jersey also refused to grant the relevant exemption to Colonial's property. (Colonial's 30(b)(6) Dep. 36:4–5; R. 1020). Just like Tennessee and Georgia, New Jersey's exemption is not limited to any particular facility, but eligibility is limited to equipment "used *primarily for the purpose*" of controlling pollution. N.J. Stat. Ann. § 54:4-3.56 (emphasis added).

Thus, in states where Colonial's equipment was required to be used for the *primary purpose* of controlling pollution, Colonial's exemption requests were not granted. Colonial's equipment is a critical component of Colonial's operations. The Counties argue, and other states agree, that Colonial's equipment is not used for the primary purpose of controlling pollution, but is, instead, primarily used to further Colonial's business. Therefore, even if Colonial is an "industrial plant" (which it is not), it would not be proper to exempt 100% of Colonial's property. The dual purpose provision permits only the value associated with equipment's pollution control function to be exempt from property taxes. There is no value differential for Colonial's equipment and equipment that is not capable of controlling pollution. Therefore, Colonial's equipment is not eligible for the Exemption in any amount.

III. THE ALC ERRED IN FINDING THAT COLONIAL ESTABLISHED THAT ITS PROPERTY IS POLLUTION CONTROL PROPERTY WHEN DHEC FAILED TO DETERMINE THE ISSUE.

Aiken County and Laurens County reassert their arguments made in their Brief at pages 44–45. In addition, Colonial states in the concluding portion of its Brief that "[o]ne wonders why Colonial would appeal DHEC's letter in the first place, considering it so overwhelming and convincingly found in favor of Colonial's position." (Colonial's Br. 47 n.14). To the extent the effect of this statement is unclear, all DHEC stated was that the property *could be* described as

pollution control equipment. (*Id.* at 47). The Exemption requires that Colonial establish that its property is (1) facilities or equipment of an "industrial plant"; (2) designed for the pollution control; (3) required by state or federal law; and (4) used in the conduct of Colonial's business. *See* S.C. Code Ann. § 12-37-220(A)(8). The parties agreed that only element (1) is at issue. Therefore, all DHEC's letter stated was that Colonial's property *could be* described in a way that satisfied element (2).

CONCLUSION

For the reasons addressed in this Reply and Aiken County's and Laurens County's Brief, Aiken County and Laurens County respectfully ask this Court to reverse the ALC's findings that (1) Colonial's pipeline qualifies as an "industrial plant" under the Exemption; (2) the dual purpose provision applies only to some eligible companies, but not all companies; and (3) Colonial established that its property qualifies as pollution control property when DHEC failed to determine the issue.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

Walter H. Cartin, SC Bar #78405
J. Evan Phillips, SC Bar #103679
PARKER POE ADAMS & BERNSTEIN LLP
P.O. Box 1509 (29202)
1221 Main Street, Suite 1100
Columbia, South Carolina 29201
(803) 255-8000; (803) 255-8017 (fax)
waltcartin@parkerpoe.com
evanphillips@parkerpoe.com

J. Madison T. Felder, SC Bar #100606
PARKER POE ADAMS & BERNSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
madisonfelder@parkerpoe.com

Attorneys for Appellants Aiken County and Laurens County

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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Appellate Case No. 2021-000219
Administrative Law Court Case No. 18-ALJ-0443-CC

Colonial Pipeline Company ..... Respondent,

v.

South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County ..... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief and Final Reply Brief of Appellants Aiken County and Laurens County** complies with Rule 211(b), SCACR.

Walter H. Cartin, SC Bar #78405
J. Evan Phillips, SC Bar #103679
PARKER POE ADAMS & BERNSTEIN LLP
P.O. Box 1509 (29202)
1221 Main Street, Suite 1100
Columbia, South Carolina 29201
(803) 255-8000; (803) 255-8017 (fax)
waltcartin@parkerpoe.com
evanphillips@parkerpoe.com

J. Madison T. Felder, SC Bar #100606
PARKER POE ADAMS & BERNSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
madisonfelder@parkerpoe.com

Attorneys for Appellants Aiken County and Laurens County

December 1, 2021
Columbia, South Carolina