

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, OCTOBER 19, 2015

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PETITION OF

WILLIAM C. BARNHARDT

CASE NO. PUE-2015-00109

For a declaratory judgment
and injunctive relief

ORDER

On October 9, 2015, William C. Barnhardt ("Petitioner"), by counsel, filed with the State Corporation Commission ("Commission") a Petition for Declaratory Judgment, Injunctive Relief and Request for Expedited Action ("Petition").¹ In his Petition, the Petitioner asserts, among other things, that: (1) Dominion Virginia Power ("Dominion" or "Company") plans to begin construction as early as October 15, 2015, on electric transmission lines that would replace existing lines located in Lancaster and Middlesex Counties;² (2) Dominion's planned construction would have a substantial impact on, among others, the Petitioner, who owns Willaby's Restaurant, which is located in White Stone, Virginia, near the existing and planned transmission lines;³ (3) the transmission lines planned by Dominion would, either in their proposed state or after very slight modification, be capable of carrying 230 kilovolts;⁴ (4) Dominion is prohibited by §§ 56-46.1 and 56-265.2 of the Code of Virginia ("Code") from beginning its planned construction unless and until the Commission reviews and approves its

¹ The Petition includes attachments that include an affidavit.

² Petition at 1-3.

³ *Id.* at 1, 2. The Petition also indicates that the Petitioner is a resident of Lancaster County and a Dominion ratepayer. *Id.* at 1.

⁴ *Id.* at 2, 4.

plan;⁵ and (5) Dominion has not requested, nor has the Commission granted, approval of the Company's planned transmission construction.⁶

The Petitioner requests that the Commission: (1) enter an immediate cease and desist order to Dominion barring it from beginning any work to construct the planned transmission lines during the pendency of this proceeding; (2) enter a declaratory judgment that Dominion's planned construction must be reviewed by the Commission in accordance with § 56-46.1 of the Code; and (3) order such other relief as the Commission may deem appropriate.

On October 13, 2015, the Commission issued an Order Docketing Petition directing that: (i) on or before October 15, 2015, the Company shall file an answer or other responsive pleading addressing the Petition's request for an immediate cease and desist order barring the Company, during the pendency of this proceeding, from beginning any work to construct the planned transmission lines identified in the Petition; and (ii) on or before October 23, 2015, the Company shall file an answer or other responsive pleading containing, in narrative form, (a) a response to each allegation of the petition and (b) a statement of each affirmative defense asserted by the Company.

On October 15, 2015, the Company filed an Answer and Motion to Dismiss. On October 16, 2015, the Commission issued an Order Scheduling Hearing, which scheduled a hearing for October 19, 2015, to consider Petitioner's request that the Commission enter an immediate cease and desist order to Dominion barring it from beginning any work to construct the planned transmission lines during the pendency of this proceeding. On October 19, 2015, the

⁵ *Id.* at 3-5.

⁶ *Id.* at 5.

hearing was held as scheduled, in which the Petitioner, Dominion, and the Commission's Staff ("Staff") participated.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

First, the Commission preliminarily enjoins Dominion from constructing the proposed transmission line pending further order of the Commission determining whether a certificate of public convenience and necessity ("CPCN") is required therefor. In reviewing the need for this temporary injunction, the Commission has found instructive the four factors set forth by the United States Supreme Court for obtaining a preliminary injunction: "A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest."⁷ For example, a temporary injunction is supported by, among other things: the likelihood that the proposed line will require a CPCN; the harm associated with constructing facilities that are designed to be permanent in the Rappahannock River; the potential cost and harm if the line is constructed and then must be removed and/or altered; costs associated with immediately commencing construction could be borne by customers and the public; the public's interest in having such

⁷ *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365, 374 (2008) (citations omitted). The Commission notes that Circuit Courts in Virginia have applied these four criteria in reviewing requests for a temporary injunction. See, e.g., *Fame v. Allergy & Immunology, PLC*, Va. Cir. No. CL15-1099, 2015 WL 4755569 (Roanoke City 2015) ("As the United States Supreme Court has held, 'A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'"); *K&K of Va., L.L.C. v. Brinkley*, 87 Va. Cir. 4 (Norfolk 2013) ("Although there are no Virginia Supreme Court cases on point, the United States Supreme Court has articulated what factors must be shown to establish the plaintiff's equity and allow the granting of a temporary injunction. 'A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'").

construction approved (if necessary) prior to commencement; and Dominion apparently has been aware of the alleged need for this proposed line for well over a year.

Second, the Commission herein schedules additional, expedited proceedings to determine if the preliminary injunction should be made permanent until such time as Dominion obtains a CPCN. These additional proceedings will among other things be held to determine whether, under Virginia statutes, the proposed line (a) is an electrical transmission line for which the Code mandates a CPCN, and/or (b) is not an ordinary extension or improvement in the usual course of business.⁸

Finally, the pleadings previously scheduled to be filed in this matter (*e.g.*, Dominion's October 23, 2015 responsive pleading and the responses and reply to Dominion's Motion to Dismiss) are hereby suspended in lieu of the proceedings set forth below.

Accordingly, IT IS ORDERED THAT:

(1) Dominion is enjoined from constructing the proposed transmission line pending further order of the Commission determining whether a CPCN is required therefor.

(2) An evidentiary hearing shall be convened on November 17, 2015, at 10 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive evidence from the Petitioner, Dominion, and Staff.

(3) On or before November 5, 2015, Petitioner, Dominion, and Staff may each file with the Clerk of the Commission and serve on the other participants (i) a legal brief, and (ii) testimony and exhibits, addressing whether the proposed transmission line requires a CPCN, and (a) is an electrical transmission line for which the Code mandates a CPCN and/or (b) is not an ordinary extension or improvement in the usual course of business. If not filed electronically,

⁸ See Code §§ 56-46.1 and 56-265.2. Accordingly, the additional proceedings scheduled herein will not address whether a CPCN should, or should not, be issued.

an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission.

(4) As provided by Code § 12.1-31 and 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"), a Hearing Examiner is appointed to rule on discovery matters that arise during this proceeding.

(5) The Commission's Rules of Practice, 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, shall be modified for this proceeding as follows: answers to interrogatories and requests for production of documents shall be served within three (3) calendar days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically, or by facsimile, on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to Staff. Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 *et seq.*

(6) This matter is continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Michael J. Quinan, Esquire, Cliona Mary Robb, Esquire, and James G. Ritter, Esquire,
Christian & Barton, LLP, 909 East Main Street, Suite 1200, Richmond, Virginia 23219;
Michael M. York, Esquire, Wehner & York, P.C., 11860 Sunrise Valley Drive, Suite 100,
Reston, Virginia 20191; Vishwa B. Link, Esquire, McGuireWoods LLP, Gateway Plaza,
800 East Canal Street, Richmond, Virginia 23219-3916; Charlotte P. McAfee, Esquire, and
Lisa S. Booth, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Riverside 2,

Richmond, Virginia 23219; and C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy hereof shall be sent to the Commission's Office of General Counsel and Division of Energy Regulation.