

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

PETITION OF

CHICKAHOMINY PIPELINE, LLC

For a declaratory judgment

Case No. PUR-2021-00211

**RESPONSE, ANSWER and MOTION FOR RULING
of LOUISA COUNTY, VIRGINIA**

COMES NOW the Respondent, Louisa County, Virginia (“Louisa”), through its Board of Supervisors (the “Board”), by counsel, pursuant to the Rules of Practice and Procedure of the State Corporation Commission (“Commission”) and the Hearing Examiner’s determination dated September 22, 2021, granting Louisa an extension until October 8, 2021 to file a response to the Petition filed herein, and states the following:

1. On September 3, 2021, Chickahominy Pipeline, LLC (the “Pipeline”) filed its Petition seeking a judgment "declaring that its proposed construction, ownership, and operation of the Pipeline are not subject to the Commission's jurisdiction pursuant to Title 56 of the Virginia Code." Petition, p. 9. The Pipeline is requesting the Commission consider its Petition on an "expedited basis." Petition, ¶ 19.

2. The Board of Supervisors of Louisa County, Virginia is the local governing body of one of the localities in the Commonwealth of Virginia through which the proposed Pipeline will be built.

3. Even though Louisa wishes to participate in the proceedings to be able to voice its concerns regarding the Commission’s regulation of the Pipeline, the process involving siting and

placement of the Pipeline in Louisa, and to obtain further information regarding the Pipeline, Louisa's attempts to gain this information from the Pipeline have not been productive.

4. A representative of the Pipeline was scheduled to appear at the September 20, 2021 meeting of the Board to present their plans for the Pipeline in Louisa County and answer the Board's questions. During the afternoon of September 20, 2021, the Pipeline representative indicated he forgot to put the meeting on his calendar. He rescheduled for the Board meeting on October 4, 2021. Two Louisa citizens opposed to the pipeline spoke to the Board at the meeting on September 20, 2021:

a) Steve Lucas said he was concerned about the proposed pipeline because natural gas is going to be phased out in favor of renewable resources in a short time period, then this facility in Louisa County would be abandoned.

b) Heidi Shalloway said she had researched the Chickahominy Pipeline and it has connections to coal companies in the United States and foreign countries.

5. In an email to the Louisa County Administrator dated September 24, 2021, the Pipeline representative wrote:

I have noted with some degree of surprise and disappointment by the way my absence from this meeting has been characterized in the media and comments made by some members of the board.

To set the record [sic] straight, yes, I did forget to put the date on my calendar, but, from the initial email exchange on August 24th, you waited till the day of the meeting to communicate a reminder. You had nearly a month to send details of the meeting and what the expected agenda for the meeting would be but did not do so. Had you done that, it would more than likely have resulted in someone from our project being present.

Sincerely,

Irfan

Irfan K. Ali

6. On September 28, 2021 Louisa filed a Notice of Participation and a First Set of Interrogatories and Requests for Production of Documents. The undersigned counsel requested responses to this discovery by October 4, 2021, so the Board could have more information when someone from the Pipeline project presented at the meeting that evening. Counsel for the Pipeline responded that discovery would be responded to in accordance with the rules of the Commission. Responses to this discovery are due October 8, 2021.

7. On October 4, 2021, five Louisa County residents and one Albemarle County resident addressed the Board during the public comment period regarding the Pipeline.

a) Dave Keller doesn't think we should be building more pipelines. He understands the damage fracking has done to our environment. He said we should stop building pipelines because we have clean energy well within our grasp.

b) Jim Wilth said there should not be another pipeline for fossil fuel. We shouldn't approve any more use of fossil fuel because of the danger to the environment. Solar and wind power are decreasing in cost every day. Other choices are cheaper.

c) Essie Nuckols opposes the Pipeline. She said fracking causes instability in the earth. As an older person living in Louisa she thinks there are already enough dangers because this area is prone to earthquakes and there is a nuclear power plant here.

d) Tammy Purcell said many in this community are very concerned about this project. She noted that the Pipeline is eager to avoid regulation and oversight. She said the Pipeline route cuts through an area already impacted by a project with inadequate environmental regulation. She said she hoped the Board will do all they can to protect the citizens, farms, streams, forests and land in Louisa.

e) Joshua Vanna from neighboring Albemarle County said he wished to share a cautionary tale. For the last few years he has been an activist with an organization that connect artists and activists. He worked to oppose the Mountain Valley Pipeline. He said these companies bring in promises of what they can deliver that are not supported by facts. He warned that the negative effects of the Pipeline will be dumped on local citizens and the localities. He said he would not trust this small LLC with no employees, no website and no statement of purpose. He said the power plant will be obsolete as soon as it's built. It will become a stranded asset because it is not in line with the finite future of fossil fuels as determined by the General Assembly. He said the Pipeline works for industry front groups that get developing companies hooked on fossil fuels. He urged the Board keep asking questions, performing due diligence.

f) Sue Frankelstraight wanted to echo what others said. She thanked the Board for being cautious. She runs a nature camp near the Transco line where this pipeline is supposed to start.

g) Also read into the record were the attached three documents collectively marked Exhibit A--an email from Barb Adams, an email from Mary Krantz and a letter from the President of Historic Green Springs. All three oppose the Pipeline.

8. On October 4, 2021, the Board heard a presentation from the Pipeline representative Chuck Akers. Mr. Akers said he was involved in providing contract field work to the Pipeline through a business called Encompass Energy Services. He and his company sent the initial contact letters to 180 landowners in Louisa County in July and they are now following up by asking for permission to access their property to survey it.

9. The Board made it clear in their experience serving Louisa for up to 24 years, this was the worst presentation they had witnessed. None of the concerns the Board had were addressed by the Pipeline presentation. They were not advised as to who owns the Pipeline, what their engineering plans are, and what their short and long term goals are. The Pipeline representative was told there was “an unconscionable lack of specific details,” in the presentation.

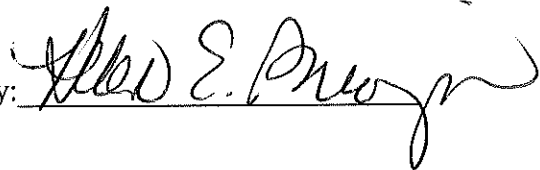
10. The Board has attempted to obtain information from the Petitioner in order to respond to this Petition which involves construction of a natural gas pipeline impacting 180 landowners in Louisa. Since this information still hasn't been provided, the Board cannot adequately respond to the Petition.

Answer and Motion for Ruling

Louisa concurs with and joins in the Answers and Motions for Rulings filed previously by Henrico County and Hanover County.

WHEREFORE, Louisa respectfully requests leave to amend and supplement this response based on obtaining more relevant information through discovery it filed on September 28, 2021, discovery filed by other Respondents, and from other sources including the Petitioner; the Hearing Examiner enter a ruling to schedule discovery deadlines and an evidentiary hearing regarding the factual assertions in the Petition; and grant such other further relief as the Commission may determine appropriate.

Respectfully submitted,
LOUISA COUNTY, VIRGINIA

By: 

Counsel

Helen E. Phillips (VSB 29708)
Louisa County Attorney
Sean M. Hutson (VSB 93578)
Assistant Louisa County Attorney
1 Woolfolk Avenue, Ste. 306
Louisa, Virginia 23093
540-967-4582
540-967-4587 (fax)
hphillips@louisa.org
shutson@louisa.org

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2021, the foregoing Response was emailed, to, after it was filed in the SCC efile system:

Eric M. Page
Eckert, Seamans, Cherin & Mellott, LLC
919 E. Main Street, Suite 1300
Richmond, VA 23219
epage@eckertseamans.com

Cody T. Murphey
Eckert, Seamans, Cherin & Mellott, LLC
919 E. Main Street, Suite 1300
Richmond, VA 23219
cmurphey@eckertseamans.com

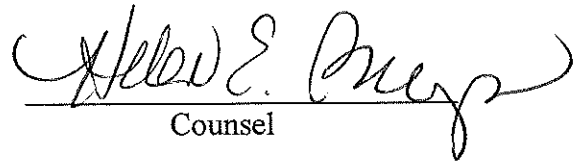
Dennis A. Walter
Hanover County Attorney
P.O. Box 470
Hanover, Virginia 23069-0470
dwalter@hanovercounty.gov

Rebecca B. Randolph
Hanover County Attorney's Office
P.O. Box 470
Hanover, Virginia 23069-0470
rrandolph@hanovercounty.gov

J.T. Tokarz
Henrico County Attorney
P.O. Box 90775
Henrico, Virginia 23273-0775
tok@henrico.us

Ryan P. Murphy
Henrico County Attorney's Office
P.O. Box 90775
Henrico, Virginia 23273-0775
mur047@henrico.us

Joseph K. Reid, III
Elaine S. Ryan
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219-3916
jreid@mcquirewoods.com
eryan@mcquirewoods.com


Counsel

Alexandra Stanley

From: Mary Kranz <mermar48@gmail.com>
Sent: Tuesday, September 28, 2021 1:00 PM
To: Info
Subject: Pipeline

CAUTION: External email

Attn: A Stanley
My public comment on the proposed gas pipeline:

I would like to thank the board of supervisors for their concern about how this pipeline will affect the citizens of Louisa county.

It will affect not only those in its direct path, but it will affect all of us.

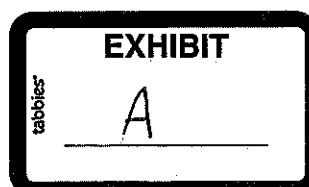
Is Louisa county to be a dumping ground criss-crossed by every transmission and pipeline that they don't want to put in a high density location?

Louisa county is my home of 50 years and I have been watching as pressures from increasing population around us squeeze us. We need to stand up and say no to harmful things like this. This pipeline does absolutely nothing for the county. It clear cuts a wide swath of land and makes it unusable. I know this because our church owns land with a pipeline across it and I have been dealing with that company about what we can and can't do.

I can assure you that what the easement stipulates and what you can actually do are different. It's not fair but they can afford the lawyers.

This company's treatment of this board has made it abundantly clear that you are no more than a bug on their windshield. Thank you for telling the state corporation commission that we want them to regulate this.

Mary Kranz
Mountain Road
545 Bakers Branch Rd, Louisa, VA 23093



Helen Phillips

From: Barb Adams <barb5100@comcast.net>
Sent: Wednesday, September 29, 2021 4:27 PM
To: Bob Babyok
Cc: Info; Helen Phillips
Subject: Thomas Hadwin resource re: Chickahominy Pipeline
Attachments: Thomas Hadwin - CPL LLC.docx

CAUTION: External email

29 September 2021

Robert "Bob" F. Babyok, Jr.
Louisa County Board of Supervisors, Chair

Dear Mr, Babylok,

The Stop Abuse of Virginian Energy (SAVE) Coalition is comprised of local, grassroots and larger state- and nation-wide organizations and has been supporting directly impacted people and communities from toxic, polluting and new fossil fuel infrastructure projects in the North and Eastern regions of the Commonwealth for over two years. We are focused on seeking accurate, timely information and providing a platform to share information, concerns and intervention opportunities, including to local, state and national governments, agencies and elected officials.

Our most recent concern regards the Chickahominy Pipeline LLC's (CPL LLC) intention to build an 83-mile, 24" diameter (large) pipeline to carry fracked natural gas from the Transco pipeline through Louisa and four other counties to serve the yet-to-be-built Chickahominy Gas-fired electric plant in Charles City County. The CPL LLC's recent petition asking the SCC to waive oversight brings up many red flags about this company and this project.

Mr. Thomas Hadwin, a former electric and gas utility executive and business/economic analyst, is a knowledgeable and well-respected resource and consultant, providing expert detailed insight and perspective to a wide range of recipients, including federal agencies such as FERC, state agencies, many elected officials, and local organizations such as SAVE.

With his approval, we are sharing Mr. Hadwin's recent perspectives (attached) about Chickahominy Pipeline LLC and its project with you - and for you to share with the other supervisors - as we all discern how best to represent, work with and on behalf of directly impacted landowners and communities. You are welcome to contact us with any questions or comments and for Mr. Hadwin's contact information.

Respectfully,

Barbara Adams
for the SAVE Coalition
804-484-2773

cc Christian Goodwin, Louisa County Administrator; Helen Phillips, Louisa County Attorney

Petition of Chickahominy Pipeline for a Declaratory Judgment

The petition asked the SCC to declare that the pipeline intended to be built by Chickahominy Pipeline LLC is not subject to the Virginia State Corporation Commission's jurisdiction.

Chickahominy argues that:

1. It is impractical and unfeasible to procure a supply of natural gas from Virginia Natural Gas (VNG).
2. Chickahominy will not serve two or more customers.
3. Chickahominy is not a "public utility."
4. A controversy exists. Without a declaratory judgment prior to construction and operation of the pipeline, Chickahominy's investment will be at risk.

No Supply of Gas from VNG

It is incorrect for Chickahominy to ask the SCC to avoid a review of its pipeline proposal because the proposed VNG pipeline was unsuccessful. VNG's project was unable to obtain approval because it failed to show a legitimate demand for the pipeline. C4GT was unable to prove it could be financed and that it would have a guaranteed long-term requirement for supply from VNG. Dominion's interest was purely speculative, having no approved facility to serve. Columbia Gas and VNG itself had only forward-looking possible small increases in demand with no proof of actual need.

Even though the proposed VNG pipeline went through the Chickahominy power plant site on its way to serve C4GT, Chickahominy was silent during the entire process.

Now, Chickahominy is asking the SCC to forgo any oversight of a major energy project that it would have accomplished if Chickahominy requested service from VNG.

Chickahominy should not escape scrutiny merely because it chose not to participate in the original VNG pipeline proposal, or request such service from VNG now. Was the silence before a gambit to avoid the customary regulatory review of a new intrastate pipeline?

What has materially changed for Chickahominy since the VNG pipeline was proposed? Its power plant was approved almost three years ago, long before VNG's pipeline proposal. If Chickahominy has a clearly established need for new gas supply, why did it not identify itself as a facility needing supply from VNG? If Chickahominy felt its circumstances were

inadequate to support the need for a VNG pipeline, even a scaled down version, why are its circumstances sufficient to justify a new pipeline now?

Perhaps Chickahominy's circumstances are tenuous now, as well. And the only way a pipeline could be built is if there is no regulatory review.

Chickahominy has the same uncertainties as C4GT.

- In communications with the Securities and Exchange Commission, Chickahominy said its Charles City power plant project was not even included in its backlog of projects. Yet, Chickahominy is asking the SCC to step aside so it can go full speed ahead building a pipeline to a power plant it does not consider a high priority.
- There is a significant, and growing, surplus of gas-fired generation in the PJM territory.
- This year's capacity auction yielded prices to generators that are a fraction of what occurred in previous years. This is a bad sign for investors.
- A shorter operating life exists in Virginia (only until 2050) than exists in other states, making Virginia merchant generators (such as Chickahominy) earn more revenue per year to pay for a new facility than is needed in other PJM states.
- Virginia generators must pay for RGGI allowances for carbon emissions in Virginia that are not assessed by other PJM states. Chickahominy will not be reimbursed for these expenses by ratepayers, reducing its competitive advantage.
- Chickahominy has the same investment risks, uncertain operating life, and added expenses as C4GT – a project that is now defunct and owes money to creditors.

These factors argue for increased regulatory scrutiny, not less.

Chickahominy will not serve two or more customers

The example used by Chickahominy to make its case, actually argues against it. Chickahominy cites Xpress Natural Gas (XNG) as a ruling by the SCC that supports its argument for no SCC review. Chickahominy noted that Transco would “design, construct, own, and operate the interconnect to deliver the natural gas” to the XNG facility. XNG would construct the short connecting pipe to its facility.

In Item 4, on page two of its petition, it states that “Chickahominy was formed as the entity that will construct, own, and operate the Pipeline that will transport the natural gas . . . for the Facility.” This is exactly the function that was performed by Transco in the XNG case; which would have required SCC review.

If Chickahominy elected to only to make a short connection to the terminus of the pipeline from Transco, the XNG precedent might apply. In item B.1 on page 4, Chickahominy identifies that typical connections for commercial customers are “located one-half mile or less” from any existing gas pipelines. That is not the case with the Chickahominy Pipeline. The newly formed company intends to build many tens of miles of pipeline over an unidentified corridor to connect to Transco in northern Virginia. This is not the short connecting pipe described in the XNG case.

Chickahominy is not a “public utility”

In its application and press releases, Chickahominy argued that its power plant is needed to serve the electricity demand of data centers in northern Virginia and customers throughout PJM. Data centers in Virginia are served by investor-owned and co-operative utilities. But Chickahominy wanted to appear as a utility when it served its purpose.

In fact, the operation of Chickahominy will be the same as generating stations operated by Dominion, APCo, and Old Dominion Electric Cooperative. Generators owned by each of these public utilities run only when dispatched by PJM, as will Chickahominy’s generating station. Each unit will bid a price for its generation into PJM’s auction and will be dispatched with the lowest price accepted first.

Electricity generated from Chickahominy’s facility will serve thousands of customers; just as do units owned by public utilities. If you consider that Chickahominy’s generating facility has only one customer, PJM, the same is true of generating units owned by public utilities.

Chickahominy will be the largest fossil-fired power plant in Virginia. It will require a substantial amount of RGGI allowances to offset its carbon emissions. This plant must run to make money for investors, so it will pay what is required to purchase the allowances. More competition for a gradually declining supply of RGGI allowances will likely increase their price, raising electricity bills for ratepayers throughout Virginia.

Energy projects that affect the cost of electricity for Virginians deserve some degree of regulatory scrutiny. The Chickahominy project and its associated pipeline will have environmental and economic consequences for the people and businesses of this state. An objective regulatory body must be involved in the review of them.

Chickahominy's investment will be at risk

Chickahominy Power submitted to SCC's review and approval (such as it is) for the power plant without considering its investment at risk. Why is it necessary to avoid review for the pipeline? Chickahominy has delayed moving forward with its project for nearly three years. For some unidentified reason, it is in a hurry to proceed. The company wants its self-inflicted delay to be at the expense of an adequate regulatory review. The citizens and businesses in Virginia should not be made to pay for the slow-moving choices of an independent company.

Thomas Hadwin

Former electric & gas utility executive

September 2021

The Historic Green Springs Inc.



Notice to take legal action

Irfan K. Ali, Managing Member
Chickahominy Power, LLC
13640 Cedar Run Lane
Herndon, Virginia 20171

Dear Mr. Ali.

We are assuming that your research has brought to your attention the fact that your proposed pipeline through Louisa County traverses two properties which are encumbered with conservation easements which are perpetual and which run with the land and whose purpose prohibits such uses as this pipeline .

The properties in question are Tax Map parcels 23-7 and 23-14 as found on the Louisa County land maps and lie to the North and South of State Route 22.

The earlier of these conservation easements dates to 1973 and taken together, these properties serve to protect not only valuable open space for the benefit of the public at large, but also to protect as buffering properties a National Historic Landmark District of national significance to the people of the United States .

You are hereby put on Notice, that any action by your company to enter upon either of these properties for the purpose of preliminary work or actual work to establish a pipeline will be considered an illegal trespass and legal action will be taken to enjoin such trespass.

Thank you for your prompt attention to this matter.

Ray H. Ely

Rae H Ely
President, Historic Green Springs