

**Virginia State Corporation Commission
eFiling CASE Document Cover Sheet**

20200617

Case Number (if already assigned)	PUR-2019-00207
Case Name (if known)	Virginia Natural Gas - For approval and certification of natural gas facilities: the Header Improvement Project and for approval of Rate Schedules and Terms and Conditions for Pipeline Transportation Service.
Document Type	EXBR
Document Description Summary	Appalachian Voices and Virginia Interfaith Power & Light ("Environmental Respondents") - Post-hearing brief
Total Number of Pages	17
Submission ID	19090
eFiling Date Stamp	6/17/2020 4:31:55PM

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 434-977-4090

201 WEST MAIN STREET, SUITE 14
CHARLOTTESVILLE, VA 22902-5065

Facsimile 434-977-1483

20063027

June 17, 2020

VIA ELECTRONIC FILING

Mr. Joel H. Peck, Clerk
c/o Document Control Center
State Corporation Commission
Tyler Building – First Floor
1300 East Main Street
Richmond, Virginia 23219

RE: Virginia Natural Gas - For approval and certification of natural gas facilities: the Header Improvement Project and for approval of Rate Schedules and Terms and Conditions for Pipeline Transportation Service.

Case No. PUR-2019-00207

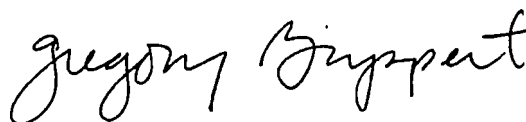
Dear Mr. Peck:

As directed by the State Corporation Commission (“Commission”) at the hearing in the above-captioned matter on May 13, 2020, please find attached the post-hearing brief being filed on behalf of Appalachian Voices and Virginia Interfaith Power & Light (“Environmental Respondents”). This notice is being filed electronically, pursuant to the Commission’s Electronic Document Filing system.

As authorized by Rule 140 of the Commission’s Rules of Practice and Procedure, Environmental Respondents are providing service of documents in this case exclusively via email unless parties request otherwise.

If you should have any questions regarding this filing, please do not hesitate to contact me at (434) 977-4090.

Regards,



Gregory Buppert

cc: Parties on Commission’s Service List

20200627

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF)
)
VIRGINIA NATURAL GAS)
)
*For approval and certification of natural gas)
facilities: the Header Improvement Project)
and for approval of Rate Schedules and)
Terms and Conditions for Pipeline)
Transportation Service)*

Case No. PUR-2019-00207

ENVIRONMENTAL RESPONDENTS' POST-HEARING BRIEF

INTRODUCTION

In this proceeding, Virginia Natural Gas (the "Company") seeks approval and certification of three intrastate gas pipeline segments and three compressor stations, together known as the Header Improvement Project (the "Project").¹ While the Project would give the Company access to gas supplies via connection to the existing Transco pipeline, it substantially relies on the yet-to-be-built C4GT power plant,² both in terms of project scope and financial

¹ Hearing Exhibit 4, Application of Virginia Natural Gas, Inc. For approval and certification of natural gas facilities: the Header Improvement Project, and for approval of Rate Schedules and Terms and Conditions for Pipeline Transportation Service at 1-3, Case No. PUR-2019-00207 (Dec. 6, 2019).

² A "new natural gas-fueled combined cycle electrical generating station with a net nominal generating capacity of 1,060 megawatts . . . to be located in Charles City County, Virginia[.]" Hearing Exhibit 4 at 3.

backing.³ The Company offers new service requested by C4GT as the primary reason the Project is necessary.⁴

There is substantial doubt, however, that the C4GT power plant will ever be built. Even before the 2020 legislative session, C4GT failed to secure financing and commence construction, despite receiving its certificate of public convenience and necessity three years earlier in 2017. Then, in its 2020 session, the General Assembly passed landmark energy legislation that further calls into question the financial viability of C4GT. This legislation includes the Clean Energy and Community Flood Preparedness Act (the “RGGI bill”),⁵ establishing Virginia’s participation in the Regional Greenhouse Gas Initiative (“RGGI”), a regional carbon dioxide cap-and-trade program for the electric power sector; and the Virginia Clean Economy Act (“Clean Economy Act”),⁶ mandating power generation from renewable energy sources and ending carbon dioxide emissions by 2050.

Despite the serious implications of this energy legislation for the viability of the C4GT power plant, the Company has failed to provide vital information pertaining to the consequences of these legislative acts for the Project’s primary customer. Virginia Natural Gas has not

³ See Hearing Exhibit 4 at 4 (“Approximately 94% of the capital cost of the Project will be attributable to C4GT, CVA [Columbia Gas of Virginia], and VPSE [Virginia Power Services Energy] . . . Each of these customer’s rates will be based on their allocated share of the costs for the project components that are used to provide their specific service.”).

⁴ Hearing Exhibit 4 at 3 (“The proposed Project is necessary in order for VNG to provide new service as requested by C4GT”); Hearing Exhibit 5 at 1 (stating “[t]he proposed Project is necessary in order for VNG to provide new service as requested by C4GT[,]” under the heading “Primary justification for the proposed pipeline”).

⁵ Clean Energy and Community Flood Preparedness Act, 2020 Va. Acts ch. 1280 (to be codified at Va. Code § 10.1-1329 *et seq.*).

⁶ Virginia Clean Economy Act, 2020 Va. Acts ch. 1193 and ch. 1194.

assessed, and in truth does not know, whether the C4GT power plant, which underpins the Header Improvement Project, remains viable after passage of this landmark legislation.

Virginia Natural Gas will also locate components of the Header Improvement Project in minority and low-income communities, populations that have historically faced the brunt of “environmental hazards, polluting facilities, and other unwanted land uses.”⁷ In addition to the energy legislation, the 2020 General Assembly passed laws strengthening the Commonwealth’s commitment to environmental justice: the Virginia Environmental Justice Act,⁸ declaring that “[i]t is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth[;]” and enacted amendments to the Commonwealth Energy Policy,⁹ underscoring Virginia’s commitment to these objectives. But the Company’s application is silent about the Project’s effects on minority and low-income communities and deprives the Commission of the ability to assess the Header Improvement Project’s compliance with these newly enacted laws.

For these reasons, the Commission should deny Virginia Natural Gas’s application for the Header Improvement Project, and direct the Company that any future application must contain information sufficient for the Commission to assess the Project in light of these new statutes.

⁷ *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 87 (4th Cir. 2020) (quoting Nicky Sheats, *Achieving Emissions Reductions for Environmental Justice Communities Through Climate Change Mitigation Policy*, 41 Wm. & Mary Env’tl. L. & Pol’y Rev. 377, 382 (2017)).

⁸ Virginia Environmental Justice Act, 2020 Va. Acts ch. 1257 (to be codified at §§ 2.2-234, 2.2-235).

⁹ Commonwealth Energy Policy, as amended, 2020 Va. Acts ch. 1191 (to be codified at § 67-102.A.12).

ISSUES PRESENTED

1. Should the Commission deny the Company’s application for a certificate of public convenience and necessity for the Project in light of the lack of evidence in the record regarding the effects of recent energy legislation on the financial viability of the C4GT power plant?

2. In its 2020 session, the General Assembly declared that it is Virginia policy “to promote environmental justice and ensure that it is carried out throughout the Commonwealth” and enacted related amendments to the Commonwealth Energy Policy. Virginia Natural Gas’s application for the Header Improvement Project is silent about the Project’s effects on minority and low-income communities. Without this information, can the Commission fulfill its environmental justice obligations?

PROCEDURAL BACKGROUND

The Company filed its application, including an appendix and prefiled written direct testimony, with the Commission on December 6, 2019.¹⁰ Environmental Respondents, Appalachian Voices and Virginia Interfaith Power & Light, filed a Notice of Participation on March 3, 2020.¹¹ Commission Staff prefiled written testimony on March 31, 2020.¹² The Company filed rebuttal testimony on April 14, 2020.¹³ On April 21, the Company filed a motion asking leave to file supplemental rebuttal testimony, attaching the proffered supplemental rebuttal testimony.¹⁴ After an abbreviated briefing schedule, the Commission granted the

¹⁰ See Hearing Exhibits 4 and 5.

¹¹ See Letter from Gregory Buppert to Mr. Joel H. Peck, Clerk, State Corporation Commission, Case No. PUR-2019-00207 (Mar. 3, 2020) (attaching Notice of Participation of Appalachian Voices and Virginia Interfaith Power & Light).

¹² Prefiled Staff Testimony, Case No. PUR-2019-00207 (Mar. 31, 2020).

¹³ Rebuttal Testimony of Virginia Natural Gas, Inc., Case No. PUR-2019-00207 (Apr. 14, 2020).

¹⁴ Motion of Virginia Natural Gas, Inc. for Leave to File Supplemental Rebuttal Testimony and for Expedited Consideration, Case No. PUR-2019-00207 (Apr. 21, 2020).

Company's unopposed motion to file supplemental rebuttal testimony on May 5.¹⁵ On April 27, the Commission set a telephonic/electronic hearing for public witness testimony for May 12, and set an evidentiary hearing for May 13, convened via Skype for Business.¹⁶ A public witness testimony hearing was held telephonically/electronically on May 12, and an additional public witness testimony hearing was held on June 8.¹⁷ An evidentiary hearing was held on May 13, at which the Commission directed Parties and Respondents to file post-hearing briefs addressing the implications for the Project of legislation arising from the 2020 session of the General Assembly.

LEGAL STANDARD

Virginia Natural Gas filed its application for the Header Improvement Project under Va. Code Ann. §§ 56-265.1 and 56-265.2. Virginia Code Ann. § 56-265.2.A.1. requires that a public utility receive a certificate of "public convenience and necessity" from the Commission before it can "construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business." Further, for proposed gas pipelines and compressor stations, Va. Code Ann. § 56-265.2:1.A establishes that the Commission "shall consider the effect of the pipeline on the environment, public health, and economic development in the Commonwealth, and may establish such reasonably practical

¹⁵ The Commission noted in its Order on Motions that, while the Company's motion was unopposed, Staff's response to the Motion for Leave asserted that the supplemental rebuttal testimony "raises more questions than it answers" and that "an entirely new application may be before the Commission." Order on Motions at 2, Case No. PUR-2019-00207 (May 5, 2020) (internal quotation marks omitted).

¹⁶ Order on Hearings, Case No. PUR-2019-00207 (Apr. 27, 2020).

¹⁷ See Hearing Report, Case No. PUR-2019-00207 (May 18, 2020); Hearing Report, Case No. PUR-2019-00207 (June 12, 2020).

conditions as may be necessary to minimize any adverse environmental or public safety impact.” Virginia Code Ann. § 56-265.2.1 also requires that the Commission “shall receive and consider all reports by state agencies concerned with environmental protection” in its review of the environmental effects of gas pipelines and compressor stations.

ARGUMENT

I. New Energy Legislation Raises Costs for the C4GT Power Plant, the Primary Customer of the Header Improvement Project, and Presents Serious Questions about the Plant’s Viability.

Although it obtained a certificate of public convenience and necessity in 2017, the C4GT power plant requested and received an extension of that certificate in 2019,¹⁸ and as of the May 13 evidentiary hearing in this proceeding, still had not obtained financing.¹⁹ Climate and clean energy legislation enacted this year will only increase costs for the C4GT power plant, heightening the uncertainty around its future.

The RGGI bill, as signed into law by Governor Northam, authorizes the Director of the Department of Environmental Quality (“DEQ”) to establish, implement, and manage an auction program to sell allowances for the emission of carbon dioxide, in a market-based trading program consistent with the RGGI program. The statute directs that its provisions be incorporated into a final regulation adopted by the Air Pollution Control Board on April 19,

¹⁸ See Petition to Extend Sunset Provision, Case No. PUE-2016-00104 (Mar. 1, 2019); Order Granting Extension, Case No. PUE-2016-00104 (Mar. 12, 2019) (extending sunset provision to May 3, 2021).

¹⁹ Hearing Exhibit 21, Rebuttal Testimony of Kenneth W. Yagelski (attaching April 14, 2020 letter from Anand Gangadharan, C4GT LLC, requesting delay in date by which C4GT required to achieve Financial Close); see Yagelski, Hearing Tr. 309:19-21, 310:10-23.

2019,²⁰ which requires power plants in Virginia to reduce carbon dioxide emissions by thirty percent by 2030.²¹

The Clean Economy Act will further reduce carbon dioxide emissions from power generation in Virginia after 2030 through several mechanisms. First, the Clean Economy Act requires Dominion Energy Virginia (“Dominion”) and Appalachian Power to retire their entire carbon-emitting generation fleet by 2045.²² Second, it requires DEQ to eliminate carbon emissions from all generators in Virginia—including merchant plants—by 2050, regardless of fuel type and without any offsetting or netting.²³ Third, it requires Dominion and Appalachian Power to produce 100 percent zero-carbon energy by 2045 for Dominion and 2050 for Appalachian Power.²⁴

C4GT, a merchant generator plant, is an independent generator backed by investors looking to profit—different from a power plant forming a part of a regulated monopoly utility’s rate base.²⁵ The foreseeable effect of both pieces of legislation together on the C4GT power plant, however, is to shorten the lifespan of the plant while increasing its costs. With the RGGI bill’s passage, C4GT must now comply with an increasingly stringent carbon cap-and-trade program, and after 2050, Virginia will not generate any carbon allowances for C4GT to

²⁰ 2020 Va. Acts ch. 1280 (to be codified at Va. Code § 10.1-1330 A); *see* 9 VAC 5-140-6010 *et seq.*

²¹ 9 VAC 5-140-6190.

²² 2020 Va. Acts ch. 1193 and ch. 1194 (to be codified at Va. Code § 56-585.5 B).

²³ 2020 Va. Acts ch. 1193 and ch. 1194 (to be codified at Va. Code § 10.1-1308 E).

²⁴ 2020 Va. Acts ch. 1193 and ch. 1194 (to be codified at Va. Code § 56-585.5 C).

²⁵ Hearing Exhibit 4 at 2; *see also* Final Order at 2, Case No. PUE-2016-00104 (May 3, 2017).

purchase.²⁶ If it is constructed at all and put into operation, its lifespan will almost certainly be less than 30 years. This represents a substantial reduction in the profitable lifespan of the power plant for its investors. Even if C4GT is built, the cost of producing electricity from burning natural gas there will only increase as a result of the RGGI legislation, which will make it necessary for C4GT to purchase allowances in order to emit carbon dioxide. As time passes, fewer allowances will be available, likely making them more and more expensive and reducing the profitability of the plant for its investors.²⁷

Critically, these costs were not contemplated when, in 2016, C4GT applied for,²⁸ and in 2017 obtained, a certificate of public convenience and necessity from this Commission.²⁹ Company witness Yagelski's pre-filed rebuttal testimony stated that this legislation would "not impact the immediate need for the Header Improvement Project."³⁰ However, as Mr. Yagelski later testified before the Commission, he does not know the effect of the Clean Economy Act and the RGGI bill on the viability of the C4GT power plant.³¹ In fact, Virginia Natural Gas has not

²⁶ 2020 Va. Acts ch. 1193 and ch. 1194 (to be codified at Va. Code § 10.1-1308 E).

²⁷ This is a basic function of supply and demand economics—the less available a commodity, the more expensive it is—which is further reinforced by the "CO₂ emissions containment reserve" of the RGGI program. *See* 9 VAC 5-140-6020 & 6210. If the auction price of an allowance price falls below the trigger price, DEQ will further restrict the supply of allowances. 9 VAC 5-140-6210. This trigger price increases each year, rising from \$6.00 in 2021 to \$11.02 in 2030. 9 VAC 5-140-6020.

²⁸ *See* Application of C4GT, LLC For a Certificate of Public Convenience and Necessity to Construct and Operate an Electric Generating Facility in Charles City County, Virginia pursuant to Va. Code § 56-580D, Application of C4GT, LLC, Case No. PUE-2016-00104 (Sept. 14, 2016).

²⁹ *See* Final Order, Case No. PUE-2016-00104 (May 3, 2017).

³⁰ Hearing Exhibit 21, Rebuttal Testimony of Kenneth W. Yagelski at 2:22 – 3:2 (Apr. 14, 2020).

³¹ Yagelski, Hearing Tr. 356:3-17.

asked C4GT to explain the effect of these two laws on the financial viability of its power plant project, nor has the Company performed any such analysis itself.³²

Compounding this uncertainty, another prospective customer and financial backer of the Project, Virginia Power Services Energy Corporation, a wholly-owned subsidiary of Dominion, would purchase capacity made available by the Project to supply fuel to Dominion’s gas-fired electricity generating facilities. However, in a filing made this year with the Commission, Dominion stated that “significant build-out of natural gas generation facilities is not currently viable, with the passage by the General Assembly of the Virginia Clean Economy Act of 2020[.]”³³ Dominion’s statement in the Integrated Resource Plan proceeding indicates strong headwinds against the likelihood that the C4GT plant is ever built, let alone economically viable for several decades of anticipated service.

With this significant uncertainty about the future of the driving customer of the Project, Commission approval would entail an unknown and potentially unacceptable level of risk for the Company’s utility ratepayers. While Company witness Yagelski was willing to speculate as to the implications of the RGGI bill for the C4GT power plant,³⁴ he also admitted that he is not an expert on the RGGI bill or the Clean Economy Act, nor an expert on their effect on the viability of the C4GT power plant.³⁵ The Company’s explanation of the Project has changed from the

³² Yagelski, Hearing Tr. 356:18 – 357:14.

³³ Hearing Exhibit 27, Commonwealth of Virginia, ex rel. State Corporation Commission In re: Virginia Electric and Power Company’s Integrated Resource Plan filing pursuant to Va. Code § 56-597 *et seq.*, Virginia Electric and Power Company’s Motion for Relief From Certain Requirements Contained in Prior Commission Orders and for Limited Waiver of Rule 150 at 5, Case No. PUR-2020-00035 (Mar. 24, 2020).

³⁴ Yagelski, Hearing Tr. 312:25 – 314:4.

³⁵ Yagelski, Hearing Tr. 312:15-24, 355:11 – 356:17.

application to its rebuttal and supplemental rebuttal testimony. The Commission must not accept the risk that the justification for the Project will change yet again after the Project is under construction or built.

The bottom line is that the Company does not know how RGGI and the Clean Economy Act will affect C4GT, and the Company has not provided real evidence addressing the likelihood that the C4GT power plant will be constructed, and remain financially viable, through its already short, less-than-thirty-year lifespan. The record contains insufficient information to provide the Commission with the necessary assurance that the Project will serve the public convenience and necessity. Therefore, the Commission should: (1) reject the Company's application for the Header Improvement Project, and (2) if the Company reapplies, request that it provide convincing evidence as to C4GT's financial viability in light of the RGGI bill and the Clean Economy Act, or, in the alternative, reapply for a project that does not include the C4GT components, so that the Commission can fully assess the public convenience and necessity of that proposal.

II. The Virginia Environmental Justice Act and Amendments to the Commonwealth Energy Policy Strengthen the Commission's Obligation to Evaluate the Environmental Justice Effects of the Header Improvement Project.

For energy projects like pipelines and compressor stations, the concept of environmental justice—the requirement that state agencies prevent disproportionate harm to minority and low-income communities—is established in Virginia law. The Commonwealth Energy Policy declares that it is state policy to “[e]nsure that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically

disadvantaged or minority communities.”³⁶ In its 2020 session, the General Assembly strengthened Virginia’s commitment to environmental justice enacting the Virginia Environmental Justice Act and amending the Commonwealth Energy Policy; these laws will go into effect on July 1, 2020.³⁷ In violation of Virginia’s existing law and in clear conflict with the newly enacted laws, Virginia Natural Gas has failed to demonstrate that the Header Improvement Project will not have a disproportionate adverse effect on minority and low-income communities. Therefore, the Commission must reject the application.

The Virginia Environmental Justice Act declares that “[i]t is the policy of the Commonwealth to *promote* environmental justice and *ensure that it is carried out* throughout the Commonwealth.”³⁸ While the act arguably gives the Commission discretion in how to “promote environmental justice” and “ensure that it is carried out,” the statute is clear that the Commission must in fact recognize and pursue these objectives.³⁹

³⁶ Va. Code Ann. § 67-102.A.11 (emphasis added); *Friends of Buckingham*, 947 F.3d at 90 (holding that this policy, in part, required State Air Pollution Control Board to conduct environmental justice review of proposed pipeline compressor station).

³⁷ Virginia Environmental Justice Act, *supra* n. 8; Commonwealth Energy Policy, as amended, *supra* no. 9; Va. Code Ann. § 1-214.A (2020).

³⁸ Virginia Environmental Justice Act, *supra* n. 8, § 2.2-235 (emphasis added). The Virginia Environmental Justice Act defines “environmental justice” as “the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.” *Id.* at § 2.2-234. And it defines “fair treatment” as “the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy.” *Id.*

³⁹ See *Taylor v. Commonwealth*, 837 S.E.2d 674, 676 (Va. 2020) (“When the language of a statute is unambiguous, we are bound by its plain meaning.”); *Dietz v. Commonwealth*, 804 S.E.2d 309, 133 (Va. 2017) (relying on the “ordinary and plain meaning” of statutory terms).

The General Assembly also amended the Commonwealth Energy Policy to declare that it is the policy of the Commonwealth to “[m]inimize the negative impacts of climate change and the energy transition on economically disadvantaged or minority communities and prioritize investment in these areas.”⁴⁰ Like the Virginia Environmental Justice Act, the language of the amendment is clear: the Commission must take steps to “minimize” the disproportionate harm of energy projects on environmental justice communities.⁴¹ Further, according to the amendments, one part of the Commonwealth’s transition to renewable energy is “the adequate supply of natural gas necessary to ensure the reliability of the electricity supply and the needs of businesses.”⁴² If the Commission accepts Virginia Natural Gas’s assertions about the need for the Project (a point that Environmental Respondents do not concede), its pipelines and compressor stations fall within this language.

Virginia Natural Gas’s application—which sites three pipeline segments and three compressor stations across multiple Virginia localities⁴³—is silent about the Project’s effects on minority and low-income communities.⁴⁴ Nor has DEQ included an environmental justice review in its assessment of the Project.⁴⁵ This analysis must take place *before* the Project is approved.⁴⁶ In contrast to the Company’s application, public comments provided preliminary evidence that

⁴⁰ Commonwealth Energy Policy, as amended, *supra* n. 9, § 67-102.A.12 (emphasis added).

⁴¹ *See Taylor*, 837 S.E.2d at 676.

⁴² Commonwealth Energy Policy, as amended, *supra* n. 9, § 67-102.A.4.

⁴³ Application, *supra* n. 1, at 2.

⁴⁴ Winnubst, Hearing Tr. at 414:17-25; 415:1-7.

⁴⁵ *Id.* at 415:8-25; Samuel, Hearing Tr. at 244:10-25, 245:1-7.

⁴⁶ *Friends of Buckingham*, 947 F.3d at 87-92 (rejecting State Air Pollution Control Board’s decision to approve compressor station permit based on incomplete environmental justice analysis).

the Project may in fact cause disproportionate harm to minority and low-income communities.⁴⁷ Company witnesses acknowledged this risk at the hearing.⁴⁸ Elected officials also expressed concerns about the Project's harm to these citizens.⁴⁹ Without an adequate environmental justice analysis from the Company or the appropriate state agency, the Commission cannot fulfill its obligation to "promote environmental justice" and "ensure that it is carried out throughout the Commonwealth." This failure violates the Commonwealth Energy Policy and is in direct conflict with the newly enacted environmental justice laws.

What other state agencies may or may not do during their own permit reviews does not relieve the Commission of its obligations to promote and carry out environmental justice.⁵⁰ Because those subsequent agency reviews will evaluate only some, but not all, aspects of the Project's impacts, the Commission's failure to consider environmental justice now creates the risk that important environmental justice problems will be overlooked later.⁵¹ The purpose of an environmental justice review is to consider whether the entire Project, not just some of its components, may cause disproportionate harm to minority and low-income communities. Moreover, any decision by the Commission to affirm the "public convenience and necessity" of

⁴⁷ Public Comments of Stephen Metts, Case No. PUR-2019-00207 (May 11, 2020) (identifying environmental justice communities close to the proposed Gidley compressor station).

⁴⁸ Yagelski, Hearing Tr. at 351: 22-25, 352: 1-2; Winnubst, Hearing Tr. at 396:10-14.

⁴⁹ Public Comments of U.S. Congressman A. Donald McEachin, Case No. PUR-2019-00207 (May 12, 2020) ("While the disparate health impacts from these compressor stations could affect everyone, they are likely to most disproportionately harm communities on the frontline where other projects, like the Chickahominy Power Station, are being pursued.").

⁵⁰ *See Friends of Buckingham*, 947 F.3d at 84 (rejecting State Air Pollution Control Board's argument that it relied on FERC's environmental impact statement).

⁵¹ *See* Hearing Exhibit 1, Comments of the Department of Environmental Quality 3 (Feb. 25, 2020) (identifying effects of the Project covered by other state and federal permits).

the Header Improvement Project⁵² will likely have ripple effects during subsequent agency reviews, tipping the scales further toward permit approval and reducing the likelihood that a meaningful and timely environmental justice review for the Project is ever completed.

As the Fourth Circuit observed in *Friends of Buckingham*, “environmental justice is not merely a box to be checked.”⁵³ Here, the Commission must take affirmative steps to determine whether the Project will cause disproportionate harm to environmental justice communities. Under both existing law and laws passed by the General Assembly in 2020, the Commission cannot brush aside its environmental justice obligations while making siting decisions for large-scale, intrusive energy infrastructure like the Header Improvement Project. Therefore, the Commission should: (1) reject Virginia Natural Gas’s application for the Header Improvement Project; (2) instruct the Company that, if it reapplies, it must include an environmental justice analysis with the new application; and (3) engage the appropriate state agency to evaluate the Company’s environmental justice analysis.

CONCLUSION

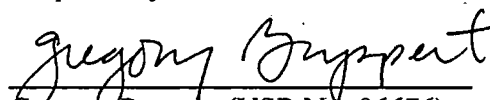
For these reasons, as described above, the Commission should reject Virginia Natural Gas’s application for the Header Improvement Project.

⁵² Va. Code Ann. § 56-265.2.A.1.

⁵³ *Friends of Buckingham*, 947 F.3d at 92.

June 17, 2020

Respectfully submitted,



Gregory Buppert (VSB No. 86676)
Jonathan Gendzier (VSB No. 90064)
SOUTHERN ENVIRONMENTAL LAW CENTER
201 West Main St., Suite 14
Charlottesville, VA 22901-5065
Tel: (434) 977-4090
Fax: (434) 977-1483
jgendzier@selcva.org
gbuppert@selcva.org

*Counsel for Environmental Respondents,
Appalachian Voices and Virginia Interfaith
Power & Light*

20200617