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September 19, 2016

VIA ELECTRONIC AND UNITED STATES MAIL

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Re: Atlantic Coast Pipeline, Case No. 16-SUP236

Please accept these written comments of the Virginia Chapter of the Sierra Club, the Chesapeake Climate Action Network, Friends of Buckingham, and Yogaville Environmental Solutions regarding the July 6, 2016 Application for a Special Use Permit (the "Permit Application") submitted by Atlantic Coast Pipeline, LLC (the "Pipeline"), requesting authorization to construct a natural gas compressor station and associated appurtenances (the "Compressor Station" or the "Station") in Buckingham County's A-1 Agricultural District.

We provide these comments on behalf of our members in Buckingham County and throughout Virginia. While some of those members will surely address the very personal impacts associated with the proposal at hand, we write to alert the Planning Commission and the Board of Supervisors of three significant legal issues related to the Permit Application:

- *First*, the Commission and Board must know that the proposed compressor station is legally ineligible for a special use permit in District A-1. Despite the fact that the proposed Station is clearly a "gas transmission facility"—a use permitted only in a heavy industrial district (and even then, only by special use permit)—the Pipeline attempts to shoehorn the project as a "public utility booster or relay station." But the Pipeline is not a "public utility" according to common usage, the common law, or the Virginia Code. In fact, when read in the context of the entire ordinance, it becomes clear that the term "public utility" describes the sort of consumer-oriented infrastructure consistent with (and indeed necessary for) the realization of District A-1's purpose: "preserving and promoting rural land uses." Issuing the special use permit, then, would constitute a clear violation of Virginia law.

- *Second*, the Pipeline's application is materially incomplete. Rather than providing the requisite "in depth" and "detailed" discussion of the proposed Station's relationship with the County's Comprehensive Plan, the application's written narrative gives only passing reference to the policies and objectives embodied in the Plan. This makes it impossible for

the Commission or the Board to assess the proposed Station's relationship with the Plan. This omission is particularly important given that the Virginia Code requires purported "public utility facilities" be assessed for consistency with the Plan.

- *Third*, we encourage all members of the Planning Commission and the Board of Supervisors to review their obligations under Virginia's State and Local Government Conflict of Interests Act (the COIA). The Pipeline's leading owner is Richmond-based Dominion Resources, whose many subsidiaries include the Virginia Electric and Power Company (also known as Dominion Virginia Power), Dominion Transmission, and Dominion Generation. Dominion and its affiliates are significant employers in the Commonwealth. Therefore, it is important that all County officials and employees make appropriate disclosures, recusals, or advisory opinion requests so as to avoid the civil and criminal penalties provided for under the COIA.

Each of these issues is discussed in turn below.

I. THE PROPOSED COMPRESSOR STATION IS LEGALLY INELIGIBLE FOR A SPECIAL USE PERMIT IN ZONE A-1.

A. THE COMPRESSOR STATION IS NOT AMONG THE "SPECIAL USES" ENUMERATED IN THE ZONING ORDINANCE.

The Pipeline seeks a special use permit to construct a natural gas compressor station in the County's Agricultural District (A-1). District A-1, however, is what's known as a "permissive" district: only those uses specifically named in the applicable portion of the Ordinance are permitted.[1] This means that the Pipeline bears the burden of "show[ing] that the use [it] proposes is one that is included or permitted" by the Ordinance.[2] In other words, the Pipeline must demonstrate that the Station falls within one of the District A-1 "special uses" enumerated in the Zoning Ordinance before the Commission can issue the requested permit.[3]

It's curious, then, that the Permit Application altogether fails to identify the "special use" the Pipeline believes applicable to the Station.[4] The Pipeline has, however, elsewhere suggested the Station should be considered a "public utility booster station" because "[c]ompressor stations compress natural gas, increasing the pressure (or boosting) and providing the energy needed to move the gas through the pipeline."[5] Importantly, however, the Zoning Ordinance permits only

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1 *See Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County*, 271 Va. 336, 349, 626 S.E.2d 374, 382 (Va. 2006).

2 *Id.*

3 *Id.*

4 *See* Permit Application at 3.

5 *See* Atlantic Coast Pipeline, "Buckingham Compressor Station," presentation to the Buckingham County Planning Commission, 6 (August 22, 2016).

"*public utility* booster or relay stations,"[6] and, as discussed below, this category does not extend to the Compressor Station.

1. The Pipeline is not a "public utility" according to common usage, the common law, or the Virginia Code.

Only "public utility booster or relay stations" are allowed by permit in District A-1.[7] At risk of stating the obvious, this use category is available only to applicants who are in fact "public utilities."[8] Thus, to qualify for a special use permit, the Pipeline has the burden of demonstrating that it is a public utility. As outlined below, the Pipeline cannot meet this burden.

i. Common Usage.

Where a term in an ordinance isn't explicitly defined, it must be given its "plain and natural meaning."[9] Dictionaries can be useful here,[10] and in this respect, the prevailing definition of "public utility" includes the notion of service to the public or to the community at large. For example, MacMillan defines a "public utility" as a "company that provides gas, electricity, or water for people to use."[11] Black's Law Dictionary similarly defines a public utility according to its "accommodation [to] the public, the members of which are entitled as a matter of right to use the enterprise's facilities."[12]

ii. Common Law Definition.

Courts applying these and similar definitions have consistently refused to expand the term to include businesses that serve end-use consumers only indirectly.[13] Instead, the requirement that a utility provide services to "the public" denotes "a direct transaction between the public utility

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6 *See* Zoning Ordinance at 11 (emphasis added).

7 *See* Zoning Ordinance at 11 (emphasis added).

8 See *Hernley Family Trust v. Fayette County Zoning Hearing Board*, 722 A.2d 1115, 1117 (Pa. Comm. 1998).

9 *West Lewinsville Heights*, 270 Va. at 265.

10 *See*, *e.g.*, *Fritts v. Carolinas Cement Co.*, 262 Va. 401, 405, 551 S.E.2d 336, 339 (Va. 2001); *Hoffman Family, LLC v. City of Alexandria*, 272 Va. 274, 284, 634 S.E.2d 722, 728 (Va. 2006).

11 *See* MacMillan Dictionary, "Public utility" (2016), available at http://bit.ly/2cxL72K.

12 *Black's Law Dictionary* (10th ed. 2014) (emphasis added).

13 *See Hawkeye Land Company v. Iowa Utilities Board*, 847 N.W.2d 199, 215–16 (Iowa 2014) (refusing to "read the word 'indirectly' into the definition of public utility"); *Phillips Petroleum Company v. Public Service Commission*, 545 P.2d 1167 (Wyo. 1976) (refusing to "insert to word 'ultimate' or 'ultimately'" into definition of "public utility").

and . . . ultimate consumers."[14] This is true even of businesses that provide a service or commodity commonly associated with public utilities[15] or are regulated by a public service commission.[16] While certain regulatory schemes may call for a broader definition of "public utility," there is consensus that the common usage of the term refers only to entities providing essential services to individual consumers.

Stated otherwise, the term "public utility" refers to companies that engage in retail (as opposed to wholesale) transactions.[17] In fact, the Virginia Supreme Court has stated that not only does the (even broader) term "utilities" in a zoning ordinance refer only to consumer-oriented businesses, but that this meaning is "clear."[18] It is hardly surprising, then, that other courts have held natural gas compressor stations to be categorically excluded from receiving special use permits reserved for public utility facilities.[19] Because the term "public utility" in the Zoning Ordinance does not extend to entities, like the Pipeline, that serve only a small group of wholesale customers,[20] the

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14 *Id.* at 216 (quoting *Northern Natural Gas Co. v. Iowa Utilities Board*, 679 N.W.2d 629, 634 (Iowa 2004)) (emphasis in original).

15 *See A & B Refuse Disposers, Inc. v. Ravenna Township Board of Trustees*, 496 N.E.2d 432, 425 (Ohio 1992) ("The fact that a private business provides a good or service associated with the usual subject matter of a public utility does not give rise to a presumption that it is devoted to public service.") (citing *Southern Ohio Power v. Public Utilities Commission*, 143 N.E. 700, Syl. Pt. 1 (Ohio 1924)); *Coastal States Gas Transmission Co. v. Alabama Public Service Commission*, 524 So.2d 357, 364 (Ala. 1988) ("The mere fact that a product which is usually dispensed by or sold by a utility to the public is being furnished does not make every person, firm, or corporation selling such product a public utility.") (quoting *Wilhite v. Public Service Commission*, 149 S.E.2d 273, Syl. Pt. 4 (W. Va. 1966)).

16 *See A & B Refuse*, 596 N.E.2d at 427 ("[T]he fact that a business is regulated by a governmental body, including a public utilities commission, is not dispositive of the question of whether that business is a 'public utility'"); *City of Lubbock v. Phillips Petroleum Company*, 41 S.W.3d 149, 159 (Tex. App. 2000) (same with respect to pipelines).

17 *See generally Phillips Petroleum*, 545 P.2d 1167; *Wilhite v. Public Service Commission*, 149 S.E.2d 273, Syl. Pt. 5 (W. Va. 1966) ("The mere transportation of its own gas by a company does make it a public utility"). *See also*, *generally*, *Hawkeye Land Co.*, 847 N.W.2d 199, 213–19 (holding company that merely transmits electricity from power plants to public utilities serving retail customers was not itself a "public utility" because it did not "furnish electricity to the public").

18 *See WANV, Inc. v. Houff*, 219 Va. 57, 60–61, 244 S.E.2d 760, 762 (Va. 1978).

19 *See generally Hernley Family Trust*, 722 A.2d 1115.

20 It's notable that the Written Narrative appended to the Pipeline's Permit Application uses the term "utility" in precisely this sense. In a section labeled "Utilities," the Pipeline states: "The site is currently not served by county water or sewer. The facility will generate low utility demand; it is anticipated that well and septic will be used for the site water and sanitary sewer needs." *See* Permit Application Written Narrative at 3.

Commission must similarly reject the Pipeline's proposal and recommend the Board deny the Permit Application.

iii. Statutory Definition

Courts interpreting the term "public utility" in a zoning ordinance have also looked to relevant statutory definitions.[21] Here, a review of relevant provisions of the Virginia Code dispels any lingering doubts over the Pipeline's status as a "public utility."[22] Virginia's Utility Facilities Act[23] governs the siting of public utility facilities and directly interfaces with local zoning ordinances.[24] In doing so, it explicitly distinguishes between "public utilities" and "non-utility gas service providers."[25] In order to qualify as a "natural gas utility," a gas company must "furnish[ ] natural gas service to the public," be "regulated as to rates and service" by the State Corporation Commission, and be a "public service company."[26] The Pipeline fails on all three counts[27] and is thus, by definition, a "non-utility gas service."[28] Because "non-utility gas service" providers are expressly excluded from the definition of "public utility,"[29] the Pipeline's

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21 *See*, *e.g.*, *Cellular Telephone Co. v. Rosenberg*, 82 N.Y.2d 364, 368 n.1 (N.Y. 1993); *Hernley Family Trust v. Fayette County Zoning Hearing Board*, 722 A.2d 1115, 1118 (Pa. Comm. 1998); *Payne v. Taylor*, 178 A.2d 979 (N.Y. App. Div. 1991).

22 Under Virginia law, statutes that interface with each other, use the same terminology, or even share a common subject matter are considered alongside each other and, if possible, harmonized. *See Rasmussen v. Commonwealth*, 31 Va. App. 233, 238, 522 S.E.2d 401, 403 (Va. App. 1999). This practice, sometimes referred to as "reading *in pari materia*," is commonly employed as to zoning ordinances and related statutes. *Wolfe v. Board of Zoning Appeals of Fairfax County*, 260 Va. 7, 20–21, 532 S.E.2d 621, 628 (Va. 2000). *See also Board of Zoning Appeals of City of Norfolk v. Kahhal*, 225 Va. 476, 480–81, 499 S.E.2d 519, 522 (Va. 1998).

23 Virginia Code §§ 56.265.1–56.265.9.

24 Because it employs the same terminology, relates to the siting of similar facilities, and directly interfaces with local zoning ordinances, the Utility Facilities Act is the most appropriate statute to read *in pari materia* with the zoning ordinance. *See* Footnote 22, above. However, other related provisions of the Virginia Code point to the same result. *See* Footnote 30, below.

25 *See* Virginia Code § 56-265.1(b).

26 *See* Virginia Code § 56-265.4:6(A).

27 Notably, the Pipeline cannot be considered a "public service company" because it is not incorporated in the Commonwealth, a constitutional requirement under Article IX, Section 5 of the Constitution of Virginia. *See Colonial Pipeline Co. v. Commonwealth*, 206 Va. 517, 519, 145 S.E.2d 227, 229 (Va. 1965); *Johnson v. Colonial Pipeline Company*, 830 F. Supp. 309, 313 (E.D. Va. 1993).

28 *Id.*

29 Virginia Code § 56-265.1(b)(11).

attempt to characterize itself as a public utility finds support no more support in Virginia's statutory law than it does in its common law.[30]

2. Read in the context of the A-1 District, the term "public utility booster station" does not include facilities like the proposed Compressor Station.

Though the dictionary and statutory definitions discussed above are instructive, terms in an ordinance cannot be interpreted in a vacuum.[31] Instead, the interpretation of an undefined term in an ordinance requires consideration of "the context in which [the term] is used."[32] This context includes the specific ordinance provisions related to the host district.[33]

Whether a facility qualifies as a permissible "public utility booster station," then, requires consideration of the nature of District A-1 and how this category fits within it.[34] When the category "public utility facilities" appears as a permitted use in a particular zoning district, the Virginia Supreme Court has stated in no uncertain terms that this category should be interpreted as referring *only to services that are necessary for the realization of the primary land uses provided for in that district*.[35] Thus, for example, an ordinance permitting "public utilities . . . facilities" in a residential zone permits only "those utilities that provide services which are necessary and essential to [that] residential area."[36]

With this in mind, it's clear that District A-1's "public utility booster station" category refers only to facilities necessary to serve the primary, rural land uses permitted within that District. This could include, for example, a water boosting station to carry water from a reservoir, a voltage regulator to keep the grow lights on in a greenhouse, or even a natural gas boosting station

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30 Other provisions of the Virginia Code point to the same result. *See*, *e.g.*, Virginia Code § 56-610 (defining "natural gas utility" as a "public service company engaged in the business of furnishing natural gas service to the public") (emphasis added); Virginia Code § 56-265.4 (exempting "the transportation of natural gas by pipeline, without providing service to end users," from a public utility's otherwise-entitlement to territorial exclusivity).

31 *See Sansom*, 257 Va. at 594–95; *City of Virginia Beach v. Board of Supervisors of Mecklenburg County*, 246 Va. 233, 236–37, 435 S.E.2d 382, 384 (Va. 1993)).

32 *Id.* (quoting *Department of Taxation v. Orange-Madison Cooperative Farm Services*, 220 Va. 655, 658, 261 S.E.2d 532, 533–34 (Va. 1980)).

33 *See County Board of Arlington County v. Bractic*, 237 Va. 221, 224, 377 S.E.2d 368, 369 (Va. 1989).

34 *See Hernley Family Trust*, 722 A.2d at 1117–18; *Mammina v. Zoning Board of Appeals of Town of Cortlandt*, 442 N.Y.S.2d 689, 691–92 (N.Y. App. 1981).

35 *See WANV Inc.*, 219 Va. at 60–61.

36 *Id. See also Mammina*, 442 N.Y.S. at 691–92 ("The focus of the Zoning Board's inquiry" in determining zoning ordinance's definition of "public utility" should be the "the nature of the service coupled with the necessity for use of the site in question in providing said services to the community.").

to warm a remote hunting lodge.[37] But it cannot include a facility, like the proposed Compressor Station, that does not serve the surrounding land uses and is, in actuality, inconsistent with those uses.[38]

3. Read as a whole, the Zoning Ordinance classifies the proposed Compressor Station as a "gas transmission facility" rather than a "public utility booster station."

A permitted use must be considered not only in the context of the host district, but also in the context of the zoning ordinance as a whole.[39] As with any comprehensive legislation, all provisions of an ordinance "should be harmonized so that, if practicable, each is given a sensible and intelligent effect."[40] This requires looking to the entire ordinance in order to "determine the true intention of each part."[41]

It's important, then, to consider that one of the uses allowed by special permit in the Heavy Industrial District (M-2) is a "Gas Transmission Facility."[42] The term "transmission" has a specific meaning in the natural gas industry, which is generally divided into three sectors: production, transmission, and distribution.[43] Just as the term "utility" is (as discussed above) associated with the final stage—that is, delivery of gas to end-use consumers[44]—the term "transmission" refers to the use of "large diameter pipelines, compressor stations, and metering facilities" that connect processing plants and field production with local distribution companies.[45] The Pipeline has consistently described its overarching project as a "natural gas transmission pipeline system."[46] Therefore, not only is the proposed Compressor Station ill-

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37 *See* Zoning Ordinance at 10–11.

38 *See* Section I.B., below.

39 *See Sansom*, 257 Va. at 595.

40 *Oraee v. Breeding*, 270 Va. 488, 498, 621 S.E.2d 48, 53 (Va. 2005) (quoting *Colchester Towne Condominium Council of Co-Owners v. Wachovia Bank*, 266 Va. 46, 51, 581 S.E.2d 201, 203 (Va. 2003)).

41 *Oraee*, 270 Va. at 498 (quoting *McDaniel v. Commonwealth*, 199 Va. 287, 292, 99 S.E.2d 623, 627 (Va. 1957)).

42 *See* Zoning Ordinance at 36.

43 *See* David A. Kirchgessner et al., *Estimate of Methane Emissions from the U.S. Natural Gas Industry*, *6–7 as reprinted in Environmental Protection Agency, AP-42, *Compilation of Air Pollutant Emission Factors* (5th ed. 1997), available at http://1.usa.gov/1Rr7GWy.

44 *Id.* at *6.

45 *Id.*

46 *See* Atlantic Coast Pipeline, Abbreviated Application for a Certificate of Public Convenience and Necessity and Blanket Certificates, FERC Docket No. CP15-554, 6 (September 18,

suited to the category of "public utility booster station," it fits perfectly into the category of "gas transmission facilities"—especially given that a compressor station is the sort of noisy, land-intensive use contemplated by the M-2 District.[47] In situations such as this, courts consistently hold that the more specific label should govern, and they reject any attempt to shoehorn a use into a more general and unfit category.[48]

Ordinance provisions relating to other districts also support the fact that the term "public utility booster or relay stations" does not extend to the proposed Compressor Station. The County's Recreational Access District (RA-2), for example, is designed to prohibit "uses and developments of a type that might depreciate or destroy [a] park-like environment" and is thus more restrictive even than District A-1.[49] The uses that are permitted in District RA-2, however—parks, lodges, churches, and playgrounds, to name a few[50]—are consistent with the district's purpose. Yet despite being more restrictive than District A-1, District RA-2 also provides for "public utility booster or relay stations" as a special use.[51] To take another example, the Pipeline itself recognizes that its Compressor Station would be inconsistent with the nature and purpose of the Village Center District (VC-1): the Permit Application takes great pains to note that its proposed site lies "well outside of the designated Village Centers."[52] Yet District VC-1, too, designates booster stations as a special use.[53]

The fact that zones as restrictive as RA-2 and VC-1 also allow "booster stations" is proof again that this category was intended only to cover the less-intensive operations necessary to service a

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2015), available at http://bit.ly/1V4vUrQ; Atlantic Coast Pipeline, Resource Report 1: General Project Description, FERC Docket No. PF15-5, 1-1 (September 18, 2015), available at http://bit.ly/1PFkvIh.

47 *See* Zoning Ordinance at 35 (describing District M-2 as accommodating land uses which "may have open storage and service areas" and "a public nuisance potential").

48 *See generally*, *e.g.*, *Peconic Bay Broadcasting v. Board of Appeals of Town of Southampton*, 99 A.D.2d 773 (N.Y. App. 1984) (upholding trial court's decision that "the fact that the ordinance specifically refers to communication facilities" precludes an attempt to categorize radio transmission tower as a "public utility structure"); *AWACS, Inc. v. Warwick Township Zoning Hearing Board*, 656 A.2d 608 (Pa. Comm. 1995) (upholding trial court's decision that cellular telephone tower was more appropriately characterized as a "telephone central office" than a "public utility" under zoning ordinance, thus restricting it to zone reserved for more intensive land uses).

49 *See* Zoning Ordinance at 38.

50 *Id.* at 39.

51 *Id.*

52 *See* Permit Application Written Narrative at 1.

53 *See* Zoning Ordinance at 46 (designating as a special use "[a]ny use which may be permitted by special use permit in either the Agriculture (A-1) or Business (B-1) Districts").

district's primary land uses. It was never meant to include large, interstate transmission facilities—a use few would maintain is consistent with maintaining a "park-like environment" or with building "a sense of community identity."[54] And unlike actual public utility facilities, the proposed Station's adverse impacts cannot be justified as a "necessary evil" to facilitate primary uses.[55]

4. Other Buckingham County ordinances refute the notion that the proposed Compressor Station is a "public utility booster station."

As pronouncements by the same governing body, other Buckingham County ordinances can also shed light on the intended scope of the "public utility booster station" category.[56] In this regard, it is significant that the County's Erosion and Sediment Control Ordinance explicitly distinguishes between "natural gas . . . utility companies" and "interstate . . . natural gas pipelines."[57] By recognizing these as distinct categories, the Erosion Ordinance provides further proof that facilities like the proposed Station do not qualify as public utility facilities but rather as "gas transmission facilities."[58]

Finally, Buckingham County's Utility Tax Ordinance also defines "utility services" so as to exclude the Pipeline. That ordinance expressly defines a "utility service" as including, in relevant part, only those who furnish natural gas service "within the boundaries or partially within the boundaries of Buckingham County, Virginia."[59] Because it does not furnish any natural gas services to Buckingham County users, the Pipeline falls beyond this definition as well.

B. THE PROPOSED COMPRESSOR STATION IS INCONSISTENT WITH SURROUNDING LAND USES AND WITH THE COMPREHENSIVE PLAN.

Even assuming the Station could appropriately be characterized a "public utility booster station," this would not automatically entitle the Pipeline to a special use permit. The very fact

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54 *Cf.* Zoning Ordinance at 38, 45.

55 *Cf. Hernley Family Trust*, 722 A.2d at 1117–18 (ordinance allowing "public service structures by a utility" merely "reflects a legislative judgment that 'utility service' is an essential component of land use and development").

56 *See Goble v. Commonwealth*, 57 Va. App. 137, 147, 698 S.E.2d 931, 936 (Va. App. 2010) ("Because the Code of Virginia is one body of law, other Code sections using the same phraseology may be consulted in determining the meaning of a statute") (quoting *Marsh v. Commonwealth*, 32 Va. App. 669, 677, 530 S.E.2d 425, 430 (Va. App. 2000)).

57 *See* Buckingham County Erosion & Sediment Control Ordinance § 10-4(I) (February 11, 2008).

58 *See Campbell v. Commonwealth*, 13 Va. App. 33, 38, 409 S.E.2d 21, 24 (Va. App. 1991) ("When the General Assembly uses different terms in the same act, it is presumed to mean different things.").

59 *See* Buckingham County Utility Tax Ordinance § 2(B) (September 11, 2000) (emphasis added).

that "booster station" is listed as a special use reflects a determination that not every "booster station" is an appropriate use in every instance. Indeed, the Zoning Ordinance itself indicates that the special use permit process is necessary to ensure "compatibility between [land] uses."[60] And a special use permit cannot be issued unless officials can "insure compliance with standards designed to protect neighboring properties and the public."[61]

There are certainly "public utility booster stations" that are consistent with—and, in fact, necessary for the realization of—the actual or permissible land uses surrounding it. As discussed above, a voltage booster may be necessary to supply electricity to a greenhouse (a use permitted by right in District A-1), and effective use of a reservoir (a special use in District A-1) may require a water booster station. But that is not the case here. The Compressor Station imbues no direct benefit to neighboring land uses, serving only downstream wholesale purchasers. Furthermore, the fact that the Ordinance elsewhere classifies "gas transmission facilities" as a use suited only for a heavy industrial district (and even then, only by special use permit) due to their "public nuisance potential"[62] further demonstrates the proposed Compressor Station's absolute unsuitability for District A-1.

But more importantly, the proposed Compressor Station—unlike the hypothetical booster stations discussed above—runs contrary to the purposes of District A-1: "preserving and promoting rural land uses . . . includ[ing] forestall lands, areas significant for the environment[,] streams, parks, and less-intensive farming operations."[63] It is a significant setback to the District's efforts to "preserv[e] farm and forest lands," to "reduc[e] soil erosion," and to "prevent[ ] water pollution."[64] Worst of all, the project fails to "reduc[e] hazards from flood and fire," and instead actually *increases* the risk of disastrous fires.[65]

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60 *See* Zoning Ordinance at 9.

61 *See Board of Supervisors of Fairfax County v. Southland Corp.*, 224 Va. 514, 521, 297 S.E.2d 718, 721–22 (Va. 1982); *Daniel v. Zoning Appeals Board of Greene County*, 30 Va. Cir. 312 (Va. Cir. 1993).

62 *See* Zoning Ordinance at 35–36.

63 *Id.* at 9.

64 *Id.*

65 *See*, *e.g.*, U.S. Pipeline and Hazardous Materials Safety Administration, Corrective Action Order No. 4-2012-1011H (June 12, 2012), available at http://bit.ly/2cBL4J0 (describing June 2012 fire at Gray County, Texas natural gas compressor station "leaving a crater approximately 30 feet in diameter and burning approximately two acres of an agricultural area including two 500-gallon plastic tanks used to store liquid fertilizer . . . [and] burn[ing] two telephone poles and transformers"); U.S. Pipeline and Hazardous Materials Safety Administration, Failure Investigation Report—Columbia Gas Transmission—Adaline Compressor Station Fire (July 26, 2011), available at http://bit.ly/2cJRzoY (reporting on November 2009 explosion and fire at Marshall County, West Virginia compressor station). *See also*, *e.g.*, Steve Bittner, "Gas explosion, fire forces evacuations," *Cumberland Times-*

These same concerns are reflected in the County's Comprehensive Plan. The Plan specifically recognizes that so-called "Rural/Agricultural/Forestry" land use categories like District A-1 are necessary to "protect these areas and natural resources to ensure that a rural quality of life is maintained."[66] More important still, the Plan recognizes that these areas "are located the furthest distance from the County's centralized public services[,] creating public safety concerns about *dangerously long response time for fire[s].*"[67]

More generally, siting the proposed Compressor Station in District A-1 would run contrary to other objectives enumerated in the Comprehensive Plan, including:

- "[m]aintain[ing] the desired rural character of the County;"[68]
- "[e]nsur[ing] that development . . . preserves environmentally sensitive features;"[69]
- "ensur[ing] harmonious integration of commercial/industrial development into the community as a whole;"[70]
- "[e]ncourag[ing] building, site and road designs that enhance the natural landscape and preserve the scenic view;"[71] and
- "encourage[ing] the conservation of significant agricultural lands."[72]

These provisions of the Comprehensive Plan are especially important given that the Pipeline attempts to classify itself as a public utility. By doing so, it opens its project up to review under Virginia Code § 15.2-2232, which requires all proposed public utility facilities be first reviewed by the Planning Commission in order to ensure they are "substantially in accord with the adopted comprehensive plan."[73] As discussed above, of course, the proposed Compressor is not *actually* a "public utility facility." However, to the extent Pipeline maintains that its project fits within the definition of a "public utility booster station," it must address the requirements of Section 15.2-2232 as well.

News (August 7, 2014), available at http://bit.ly/2cLU2O7; Erika Mahoney, "Lightning Causes Compressor Explosion," *WBNG* (July 23, 2012), available at http://bit.ly/2d1s5Tg; Matt Smith, "Compressor station blows up," *Cleburne Times-Review* (November 18, 2008), available at http://bit.ly/2cWIhqe.

66 *See* Comprehensive Plan at 186.

67 *Id.* at 187 (emphasis added).

68 *Id.* at 198.

69 *Id.* at 198, 216, 230.

70 *Id.* at 203.

71 *Id.* at 216, 230.

72 *Id.* at 217.

73 Virginia Code § 15.2-2232(A).

II. THE PERMIT APPLICATION LACKS A "DETAILED AND "IN DEPTH" DISCUSSION OF THE PROJECT'S RELATIONSHIP WITH THE COMPREHENSIVE PLAN.

A special use permit application must include a written narrative "describ[ing] the relationship of the proposed project to the relevant components of the Comprehensive Plan."[74] This narrative should "be very detailed and describe in depth each and every component" of the Comprehensive Plan.[75] The Pipeline's Written Narrative, by contrast, includes only a passing reference to the Comprehensive Plan in noting that the proposed site is "located well outside of designated Village Centers and Growth Corridors."[76] While it contains some discussion of the topics outlined in the County's Special Use Permit form, it says not a single word about the sections of the Comprehensive Plan that correspond to those topics. Nor does it discuss the nature or purpose of District A-1 or, more importantly, how the proposed Station fits within that context. This is a far cry from a "detailed and . . . in depth" description of "the relationship of the proposed project to the relevant components of the Comprehensive Plan."[77] Given the centrality of the Comprehensive Plan in assessing zoning decisions—especially decisions involving purported "public utilities"[78]—the Pipeline should be sent back to the drawing board for this reason alone.

III. COUNTY OFFICIALS SHOULD REVIEW THEIR OBLIGATIONS UNDER THE STATE AND LOCAL GOVERNMENT CONFLICT OF INTEREST ACT.

The Planning Commission and the Board of Supervisors are set to act on a Permit Application submitted by a member of the Dominion corporate family. Because Dominion and its affiliates are significant employers in the Commonwealth, it is possible that County officials involved in considering this request—or, importantly, their immediate family members—may be Dominion employees. As such, we encourage all County officials involved in considering this request to review their obligations under Virginia law and, if necessary, make appropriate disclosures or recuse themselves from the matter.

Virginia's State and Local Government Conflict of Interest Act[79] (the COIA) requires a local government officer or employee to "disqualify himself from participating in [any] transaction [that] has application solely to . . . a business that has [an] affiliated business entity relationship with [a] business in which he has a personal interest."[80] The COIA broadly defines

74 *See* Permit Application at 11.

75 *Id.*

76 *See* Permit Application Written Narrative at 1.

77 C*f.* Permit Application at 11.

78 Virginia Code § 15.2-2232(A).

79 Virginia Code §§ 2.2-3100—2.2-3131.

80 Virginia Code § 2.2-3112(A)(1).

"transaction" to include "any matter considered by any governmental or advisory agency . . . on which action is taken or contemplated."[81]

The Planning Commission's decision on whether to recommend the special use permit is thus a "transaction" under the COIA—as is any subsequent action by the Board of Supervisors. And these "transactions" have application solely to one business: Atlantic Coast Pipeline, LLC. The COIA imputes the Pipeline's interest in the transaction to all of its "affiliated business entit[ies]."[82] This includes any companies with "shared management or control," as determined by considering several factors, including: whether "the same person or substantially the same person owns or manages the two entities," whether the two entities share "common or commingled funds or assets," whether they "share the use of the same offices or employees" or "otherwise share activities, resources or personnel on a regular basis," and whether there is a "close working relationship between the entities."[83]

According to filings before the Federal Energy Regulatory Commission (FERC), the Pipeline's largest owner is Dominion Resources, Inc.[84] Furthermore, the Pipeline's facilities will be operated solely by Dominion Transmission, Inc., a wholly owned subsidiary of Dominion Resources.[85] Dominion Transmission is also responsible for permitting the project and for overseeing construction.[86] Taken together, this level of shared management, shared use of employees, shared activities, and "close working relationship" qualify the Pipeline and Dominion as "affiliated business entities" under the COIA.[87] Therefore, any County official or employee with a "personal interest" in Dominion or its many subsidiaries is subject to recusal under the COIA. A "personal interest" includes, most notably, a salary to the County official *or* "*a member of his immediate family*"[88] from Dominion or its subsidiaries—as well as an ownership interest that exceeds 3% of a business's total equity or that may reasonably result in dividends in excess of $10,000.00 annually.[89]

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81 Virginia Code § 2.2-3101 (definition of "Transaction").

82 Virginia Code § 2.2-3112(A)(1).

83 Virginia Code § 2.2-3101 (definition of "Affiliated business entity relationship").

84 *See* Atlantic Coast Pipeline, Abbreviated Application for a Certificate of Public Convenience and Necessity and Blanket Certificates, FERC Docket No. CP15-554, 4 (September 18, 2015), available at http://bit.ly/1V4vUrQ.

85 *See* Atlantic Coast Pipeline, Amendment to Application for a Certificate of Public Convenience and Necessity and Blanket Certificates, FERC Docket No. CP15-554 at 4 (March 11, 2016), available at http://bit.ly/21TiRdh.

86 *Id.*

87 *See* Virginia Code § 2.2-3101 (definition of "Affiliated business entity relationship").

88 Virginia Code § 2.2-3101 (definition of "Personal interest") (emphasis added).

89 *Id.*

In sum, any County officials or employees who collect a salary from a company in the Dominion corporate family (including Dominion Resources, Dominion Transmission, and the Virginia Electric and Power Company, doing business as Dominion Virginia Power)[90]—or who have an immediate family member who does—should review their obligations under the COIA. Failure to do so may result in criminal prosecution,[91] forfeiture of salary,[92] or invalidation of the transaction.[93]

IV. CONCLUSION

Issuing a special use permit in this circumstance would constitute a clear violation of Virginia law, which holds that the undefined term "public utility" in a zoning ordinance is necessarily limited to retailers who provide essential services to end-users. But even were the Commission and Board to depart from this binding precedent from the Virginia Supreme Court and give the phrase a broader construction, issuing the permit would nonetheless violate the fundamental requirement that a proposed special use be consistent with surrounding land uses and with the governing comprehensive plan. As to this latter requirement, the Commission currently lacks even the minimal information necessary to fulfill its statutory mandate under Virginia Code § 15.2-2232(A) to review the proposal to ensure it is "substantially in accord with the adopted comprehensive plan."

This is, in short, not even a close case. We respectfully request this Commission make a recommendation that the Board of Supervisors deny it accordingly.

Sincerely,

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90 For a full list of Dominion's subsidiaries as of February 15, 2016, see Exhibit 21 to Dominion Resource's 2016 Form 10-K filing with the Securities and Exchange Commission, available at http://bit.ly/2cLPV4s. Note, however, that this does not include any "affiliated business entities" under the COIA, as these entities do not, by definition, share a parent-subsidiary relationship. *See* Virginia Code § 2.2-3101 (definition of "Affiliated business entity relationship").

91 *See* Virginia Code § 2.2-3120.

92 *See* Virginia Code § 2.2-3124.

93 *See* Virginia Code § 2.2-3112(C).