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October 22, 2018

Submitted via email:

Chairman Richard D. Langford and Members of the Air Pollution Control Board
c/o Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

**RE: Board Authority for Review of the Buckingham Compressor Station,
Registration No. 21599**

To Chairman Langford and Members of the Air Pollution Control Board:

On November 9, the Department of Environmental Quality (“DEQ”) will ask this Board to take final action on a draft minor New Source Review air pollution permit for the proposed Buckingham compressor station for the Atlantic Coast Pipeline. This Board has the independent authority to determine whether the draft permit meets the requirements of the federal Clean Air Act and Virginia law. In our written comments, we have documented reasons why this permit falls short of those requirements.

This Board also has the statutory obligation to consider whether issuance of the permit is *reasonable* and whether the proposed location is *suitable*. If this Board determines that the permit should not be issued, that decision cannot be disturbed by the Federal Energy Regulatory Commission (“FERC”). The Natural Gas Act explicitly preserves states’ authority under the Clean Air Act to regulate air pollution and deny permits. 15 U.S.C. § 717b(d)(2). Dominion is eager to convince state officials that control of the project is out of their hands. But Dominion is wrong. Moreover, we strongly disagree with the Administration’s recent suggestion that the Commonwealth does not have independent authority to enforce the Clean Air Act and to consider site suitability when considering this permit.¹

¹ Responding to the Virginia Advisory Council on Environmental Justice’s concerns about the compressor station, Secretary of Natural Resources Matthew Strickler wrote that while the Administration “share[s] your frustration over the fact that [FERC] made decisions regarding siting . . . without the kind

The Board's authority to consider environmental justice and to deny the permit is well within the scope of the Board's authority and is by no means precluded. Virginia law mandates that the Board, when deciding whether to issue any permit, "shall consider facts and circumstances relevant to the reasonableness of the activity involved." Va. Code Ann. § 10.1-1307. Among the factors and circumstances the Board must consider are:

- "[t]he **character and degree of injury** to, or interference with, **safety, health**, or the reasonable use of property which is caused or threatened to be caused" and
- "[t]he **suitability of the activity** to the area in which it is located."

The Atlantic Coast Pipeline developers' decision to put the Buckingham compressor station in the middle of the historic, predominantly African-American Union Hill community has generated significant public concern. The Virginia Advisory Council on Environmental Justice shares these concerns about site unsuitability and the potential injury to the safety and health of the Union Hill community. The Advisory Council was established in 2017 by Executive Order No. 73 to ensure that "no segment of the population, especially individuals most impacted and vulnerable" would "bear disproportionately high or adverse effects from pollution." After the Advisory Council examined the Buckingham compressor station and the ACP's application for an air pollution permit, the Council called on the Governor to request that DEQ suspend this permitting decision until after the health impacts on the Union Hill community could be more thoroughly assessed.

A key step of Environmental Justice review includes identifying vulnerable populations that are at risk of disproportionate and cumulative harm from polluting facilities, something that neither FERC nor DEQ has done. The results of a thorough environmental justice and health assessment of the community are necessary for this Board to meaningfully assess the "character and degree of injury" to the "safety [and] health" of the community, and to consequently determine the "suitability" of siting the compressor station in that community. This Board should require DEQ to conduct an assessment and to report its findings to the Board prior to deciding whether to approve the draft permit. An environmental justice and health assessment should include, at a minimum, an examination of the following:

of thoughtful review we would have required[,] [t]hose decisions preclude us from taking many of the actions that . . . environmental justice advocates have asked us to take." (Oct. 16, 2018).

- **The racial and socioeconomic makeup of the affected community.** A study conducted by Friends of Buckingham found that racial and ethnic minorities—predominantly African Americans—make up 83% of the residents of the surveyed households within a 1.1-mile radius of the proposed compressor station. This study also documented that the Union Hill community is much more densely populated than DEQ has acknowledged.
- **The incidence of community members’ existing health conditions.** Many elderly residents and children in Union Hill suffer from chronic respiratory ailments, and many others from high blood pressure, heart disease, and diabetes—all ailments that render those community members particularly susceptible to health impacts from the proposed compressor station.

As a state agency that receives federal funds, the Virginia DEQ is also subject to the requirements of Title VI of the Civil Rights Act of 1964. 42 U.S.C. § 2000d. This landmark civil rights law requires that no person shall “be denied the benefits of, or be subjected to discrimination” on the basis of race under any program that receives Federal financial assistance. The Virginia DEQ regularly receives financial assistance from the EPA and is thus subject to the requirements of Title VI. The EPA’s draft guidelines and regulations have consistently allowed consideration of disparate impacts on the basis of race as a means of determining whether recipients of Federal assistance have discriminated on the basis of race. *See, e.g., Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs*, 65 Fed. Reg. 39655 (Jun. 27, 2000). There is compelling evidence that this proposed permit would impose disparate impacts on the basis of race. The relatively dense population (compared to Buckingham County as a whole) that lives closest to the new source of proposed air pollution is overwhelmingly African American in a county where only about one-third of the population is African American. To ensure compliance with the Civil Rights Act, the Board must carefully consider whether issuing the draft permit will subject the Union Hill community to discrimination.

The obligation to consider environmental justice impacts is also enshrined elsewhere in Virginia law. The Virginia Energy Plan requires the Commonwealth to develop “energy resources and facilities in a manner that does not impose a disproportionate adverse impact on economically disadvantaged or minority communities.” Va. Code Ann. § 67-101(12). An environmental justice and health assessment will give the Board the information it needs—but

currently lacks—to determine whether the Buckingham compressor station will impose a disproportionate adverse impact on the Union Hill community.

In addition to its obligation to consider environmental justice impacts of the proposed facility, Va. Code Ann. § 10.1-1307 also requires the Board to consider [t]he **social and economic value** of the activity involved.” To fulfill that statutory obligation, the Board must take into consideration **the greenhouse gas (“GHG”) emissions from the proposed compressor station**. Atlantic estimates that the proposed facility would emit 295,686 tons of CO₂-equivalent pollution per year. Emissions from the proposed Buckingham compressor station alone would negate about one-third of planned annual CO₂ emissions reductions under the Commonwealth’s current draft carbon regulations. The Board should also consider the **demonstrated lack of need for the ACP**. Only Dominion Energy and the other utility holding companies that own the ACP are certain to gain from construction of the pipeline, which promises a lucrative 14% return on equity for the company—regardless of whether it is necessary or even used at all. In the meantime, Dominion’s captive Virginia ratepayers will be stuck with the bill.

In light of the technical deficiencies of the draft permit, as well as the serious environmental justice concerns, high levels of greenhouse gas emissions, and lack of need for the Atlantic Coast Pipeline, we ask that this Board reject the draft permit for the Buckingham compressor station.

Respectfully,



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