



CURB UPDATE

3117 OSBORNE RD CHESTER, VA 23831
CONTACT-US@CURB-FERC-AEP.COM



FEBRUARY 1, 2018

OUR MISSION IS TO EDUCATE AND INFORM ...

VOLUME 4 ISSUE 1

Please Contribute



Is APCO in Violation of Its License and State Law
Smith Mountain Lake, VA

CURB YouTube CHANNEL



LITIGATION STATUS

IMPORTANT LINKS

[Stakeholder Stories](#)

[APCO Authority](#)

[Property Owner Survey](#)

[Realtor Survey](#)

[CURB Handouts](#)

[Relevant Case Law](#)

[Sign Our Petition](#)

[Articles of Incorporation](#)

[FAQs](#)

[Timeline](#)

Virginia Supreme Court Writ Panel Hearing Date Set for Pressl and Nissen

A Writ Panel consists of either three or four Supreme Court Justices. If the Chief Justice is a member of the Writ Panel, the Chief Justice is the fourth member. A Writ Panel determines if a case is worthy of appeal. If the Writ Panel determines a case is ripe for appeal, a hearing date will be set at a later date before all seven Justices of the Virginia Supreme Court.

NOTE: The Writ Panel proceedings are open to the public. I understand the hearing rooms are small and hold a limited number of people. Protocol is strict and dress codes are strictly enforced. Anyone wearing clothing that is 'profane', or otherwise 'indecent' may not be permitted into the Courtroom. Ball caps and other hats should not be worn in the Courtroom unless the hat has a religious significance or is part of a military or police officer's uniform. **If you plan to attend, please dress appropriately ... no shorts and tee shirts!**

Pressl and Nissen both requested an oral argument in their petitions for appeal. Their hearings are scheduled for **13 February 2018 at 2:00PM, 100 N 9th St, Richmond, VA 23219**. The room will be set on the day of the appeal. It's unclear if the same panel will hear both cases; however, since our attorneys will argue both cases, the same panel may hear both cases. Parking will be difficult as the General Assembly is also in session. It would be beneficial to see 10 to 15 supporters in attendance.



Our attorneys are entitled to state orally to a panel of Justices of this Court the reasons why the petitions for appeal should be granted. Each argument shall not last longer than 10 minutes. The appellee (APCO) may attend the oral argument to listen and observe, but APCO is not entitled to speak or address the Court. The oral arguments will focus on the errors Judge Reynolds committed in the Pressl and Nissen hearings. Case details and evidence will not be presented.

Why I Believe Both Appeals Will Advance

Judge Reynolds in granting APCO's Demurrer in Pressl and granting Summary Judgement in Nissen, violated the rules of the Virginia Supreme Court. The Reynolds' court is the trial court of record and is not allowed to dismiss cases prior to trial without good reason. In the Pressl hearing Judge Reynolds considered evidence, even though he was forbidden to do so. He converted a Demurrer proceeding into a Summary Judgement, which is not permitted. His ruling contains contradictory statements, procedural errors and a complete failure to recognize the supremacy of Virginia easement law over federal licensing matters. During the 11 April hearing, recall that Judge Reynolds said, *"I am very sympathetic with the plight of private property owners in cases like this. It is clear to me that when the lake was first established, that individuals were essentially allowed to build whatever structures, according to the building code. They went to the local county of their residence and those requests were almost universally granted with little to no modification, and frankly, little to no concern on behalf of Appalachian Power. ... I'm certain that, at the time it was done, there was not the expectation of federal insertion and regulation of private property rights ... but we all must recognize that the ability of Appalachian Power to operate the project in this case that created Smith Mountain Lake is pursuant to a federal license."*

In the Nissen case Judge Reynolds wrongfully granted APCO's Motion for Summary Judgement. His final order cites no Virginia case law precedent, and notably does not contain any of the judge's oral musings about the 'stupidity' of the easement and the landowners that signed it, or the blowing political winds from Washington regarding government over-regulation and uncompensated taking of property. The absence of any Virginia case law precedent in his order is not surprising, as no precedent exists to support his ruling. Judge Reynolds wrongly determined that the flowage easement in question was 'unambiguous' and the equivalent of 'fee-simple ownership' for APCO. More importantly, Judge Reynolds is forbidden, by the rules of the Virginia Supreme Court, to grant Summary Judgement when material facts are in dispute, of which there were numerous.

I've considered how Judge Reynolds could possibly rule in favor of APCO without allowing the Pressls and Nissens to develop the evidence and prove the facts in a trial. There are three possible reasons, and none of them are justifiable or proper:

1. The Court may not understand Virginia civil property law. Recall Judge Reynolds practiced criminal law as an assistant prosecutor for over a decade. There is little doubt he has expertise in criminal law, but has limited experience in civil matters.
2. The Court may have felt a need to dispose of this case quickly to clear its docket. Granting a demurrer or summary Judgement prior to discovery, development of evidence and proving facts is an improper exercise of the Court's discretion, as it violates the rules of the Virginia Supreme Court. Trial Courts are supposed to try cases not prematurely dismiss them.
3. The Court may have been unduly influenced by a third party and encouraged to rule in favor of APCO.

Recovery of Losses -- We're gathering information on the who, what, when and where from those adversely impacted by APCO's efforts. We're collecting this information via a secure website where the information is protected and held in strict confidence. If you've been damaged financially by APCO and what to consider recovering some of those funds, let me know via our secure email address. If the interest is there, class action may be a possibility.

Bill Brush

C.U.R.B. CONTRIBUTIONS CAN BE MAILED TO:
3117 Osborne RD. Chester, VA 23831-1953

[Donate](#)



ELIMINATE IGNORANCE – Before you agree to sign any APCO's property stealing revocable permits, at least read the permit and your flowage easement. Seek the professional advice of a competent attorney. We know several. Be patient, vigilant and stay informed. For a more in-depth understanding, we recommend viewing the following CURB videos:

[Your Flowage Easement](#) [APCO's Dock Permit](#) [History of Regulation](#) [What Did APCO Permit](#)

VISIT WWW.CURB-FERC-AEP.COM FOR FURTHER INFORMATION