



CURB UPDATE

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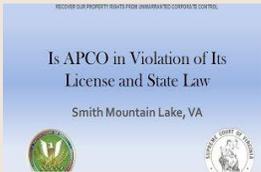
APRIL 1, 2017

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Press--April 11th Hearing--Franklin County Courthouse Rocky Mount at 12:00PM ... Observers Encouraged!

On February 9th APCO filed its latest motion to avoid state court justice asking the Franklin County Circuit Court to dismiss Pressls' complaint. Of course, APCO could have asked for a dismissal in June 2015 when the Pressls first filed their lawsuit in FC circuit court. But instead, APCO illegally removed the case to federal court, where Judge Moon improperly dismissed the case, necessitating Pressls' successful appeal to the US 4th Circuit, followed by remand to FC Circuit Court. APCO's actions demonstrate it has no respect for state court, is fearful of state easement law and wants to financially punish those who challenge its authority, rather than resolve the scope of their land rights under the flowage easement.

In their request to dismiss Pressls complaint, APCO makes two bizarre claims:

1. *"that APCO "would" require the Pressls to apply for the Permit; does not allege that APCO ever actually made such a demand on them. Indeed, the Permit attached to the Pressls' Complaint ... is simply characterized as a sample of the "proposed" Permit. Thus, the controversy asserted here, to the extent that there is one, is too speculative to give rise to a justiciable controversy."*

As to APCO's first assertion that they never demanded anyone, including the Pressls, sign their permit implies that APCO is amenable to negotiating the permit, is totally BS. One day before they filed their motion to dismiss Pressls' complaint, APCO filed a new lawsuit against Nissens for completing their dock without signing APCO's permit. APCO has consistently stated that property owners MUST sign their permit, without modification of its terms, period.

2. *"Though the U.S. Court of Appeals for the Fourth Circuit agreed and reversed, its opinion did not identify any fault in Judge Moon's reasoning..."*

Seriously? Judge Moon's ruling was VACATED and REMANDED. It would frustrate the decision made by the overturning court to accord any effect to a judgment vacated because the district court lacked jurisdiction. The vacation of the judgment by the U.S. Court of Appeals for the Fourth Circuit de-legitimized the opinion supporting the judgment rendered by the district court. Once judgment is vacated, so is the opinion as it is no longer supported by an operative judgment. The judgment after being vacated lost its authoritative effect and its vacation clouds and diminishes the opinion as it should have never been rendered in the first place.

APCO also continues to cite its past federal district court cases as precedent and relevant, however, given the 4th Circuit's VACATION of Judge Moon's ruling for lack of jurisdiction, prior APCO district court cases would also be overturned today. APCO fails to cite any relevant state law to support their position, because relevant state property law supports the Pressls' position that the flowage easement does not grant APCO rights to regulate docks.

Brown v. Haley, Virginia Supreme Court, Landmark Decision Pertains to ALL Shoreline Property Owners

The Virginia Supreme Court in 1987 ruled that shoreline property owners hold residual rights to construct recreational improvements like docks, within APCO's flowage easement. When a flowage easement retains a landowner's right to access waters for recreational purposes, the construction of "docks, bathhouses, and other facilities related to water sports and recreation" are reasonable for the enjoyment of the easement. *Brown v. Haley*, 355 S.E.2d at 570.

APCO is illegally expanding its flowage rights by re-purposing our easements to include the entire project boundary, when the easement's only purpose is expressly limited to the operation of a dam and power station. APCO's actions are an illegal expansion of its flowage rights, which was never contemplated by the original parties to the flowage easement. Virginia property law prohibits re-purposing an easement without the consent of all parties to the agreement. Virginia case law states that re-purposing an easement, without the consent of the parties to the easement, can result in termination of the easement. *"No use can be made of an easement different from that established when the easement was created, which imposes additional burdens on the servient estate."* *Hayes*, 243 Va. at 258-59, 414 S.E.2d at 822; *Cushman*, 204 Va. at 253, 129 S.E.2d at 639-40.

APCO v. Nissen Franklin County Circuit Court Case No. CL17-1605 (8 February 2017)

Following APCO's loss in the U.S. 4th Circuit, the Nissens renewed their FC building permit and began work to complete their dock. Nissens did seek APCO's permission or sign APCO's permit, so APCO filed a lawsuit in FC to stop the Nissens. APCO's lawsuit uses Judge Moon's VACATED decisions and fails to cite any supporting Virginia property law. It's hard to believe that APCO is paying for such a pathetic defense, but it's the best they can do. Now APCO must prove in state court that a dock prevents them from flooding and generating electricity, and that is factually impossible.

Nissen Filed a Request for Rehearing with the FERC on 29 March 2017

1. Nissen filed his FORMAL COMPLAINT with the FERC on 31 January 2017. The complaint showed that APCO was in violation of numerous Commission Orders and policies requiring APCO to resolve property rights disputes with third party non-licensees in a state court of appropriate jurisdiction. That APCO misrepresented material facts and laws to the federal district court. That APCO pre-emptively filed a federal court action in direct violation of APCO's SMP and the FERC order implementing that plan; and that APCO manufactured federal jurisdiction, stating that the Nissens violated the FPA in order to subvert Nissens' access to state court.

2. The FERC responded on 1 March 2017 Nissens' complaint stating: *"You allege APCO is operating the project without properly acquired property rights. Additionally, your filing alleges that Appalachian Power has refused to resolve property law actions in a court of appropriate jurisdiction and identifies a number of actions that you want the Commission to implement. ... we are not aware of any instance in which Appalachian Power does not hold the rights necessary to carry out the terms of its license If, as a result of a court's property law decision, it appears that the licensee does not have the adequate property rights necessary for project purposes, the Commission may require the licensee to obtain the necessary rights."*

3. Nissens' 29 March 2017 rehearing request to the FERC wrote:

It is disingenuous to threaten condemnation, in retrospect of Commission decisions at Lake of the Ozarks, and Crescent Bar Island. The Commission, often to the detriment of communities surrounding its projects, refuses to impose 'costly' requirements upon its licensees. One need look no further than the Smith Mountain Project, where APCO was given a pass on sedimentation and erosion during relicensing, because the costs associated with prevention and mitigation were too great of a financial burden. The fact that the Commission also declined to require its licensee at Lake Oroville, CA to fix its emergency spillway because the estimated cost of \$100,000,000 was too great to protect public safety. But understand, these costs pale in comparison to the estimated \$1,000,000,000 it will cost APCO to condemn all shoreline in the Smith Mountain Project so it can impose its Shoreline Management Plan.

The Commission has the authority and obligation to end this fiasco today, or face the embarrassment of a national challenge. The Commission must reinforce with APCO that the SMP applies only to those lands in the project boundary where Appalachian Power has property rights. The licensee has no authority to regulate construction on privately owned lands. The continuation of SMP enforcement on lands, which APCO does not hold the necessary property rights, is a violation of Commission regulations and law. Clearly, the Commission must absolve APCO from its license obligation for the properties it does not control.

The Commission must recognize basic contract law and well settled Virginia property law, specific to APCO's flowage easement. My 1960 standard flowage easement consists of 3 pages and my easement cannot legally be re-purposed to enforce some 374 pages of new regulations, to include an infinitely revisable federal license, shoreline management plan and APCO permits, without my agreement. Such a proposition offends the supremacy of Virginia law on property issues and violates the separation of powers clause under the U. S. Constitution's 10th Amendment. Such a scheme cannot pass the straight face test! Such absurdity is palpable.

THE GREAT CON -- For over 15 years, Appalachian Power Company and the Federal Energy Regulatory Commission, claiming federal law, methodically scammed the Smith Mountain Lake community to sign-away property rights for permission to build a dock. In December 2016, this fraud was exposed by six federal appellate justices who declared that since FERC only regulates APCO, a landowner cannot violate federal law by constructing a dock. The final battle to recover our property, invalidate fraudulently obtained APCO Permits and replace the Shoreline Management Plan with lawful regulation is underway in Franklin County Circuit Court.

Every property owner, should rally to defend their constitutionally guaranteed right to own and enjoy their property. It's simply illegal to take property without paying. Donations are needed to fund the legal expenses to defend our property. Something is radically wrong when a U.S. government agency colludes with its multi-billion-dollar licensee to steal property.

**C.U.R.B. CONTRIBUTIONS CAN BE MAILED TO:
81 LIGHTHOUSE LN MONETA, VA 24121-1991**



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:

[Read Your Flowage Easement](#)

[Read APCO's Dock Permit](#)

[History of Regulation](#)

[What Did APCO Permit](#)

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