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CURB UPDATE

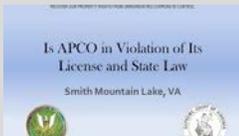


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OUR MISSION IS TO EDUCATE AND INFORM ...

VOLUME 2 NUMBER 4



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NEXT CURB MEETING WILL BE HELD AFTER ORAL ARGUMENTS IN PRESSL V APCO

IMPORTANT UPDATE – Oral arguments before the U.S. 4th Circuit Court of Appeals in Richmond Case: 15-2348 CIVIL: Whether district court erred in denying motion to remand to state court and in granting motion to dismiss. Richard Pressl v. Appalachian Power for failure to exhaust administrative remedies (Moon). **PANEL III Blue Courtroom (Room 339) 9:30 a.m. Wednesday, October 26, 2016**

Pressl and Nissen are the first to appeal Judge Moon's decisions based upon the absence of federal jurisdiction and the authority of state courts to determine state property law. Both cases will be heard by a panel of three appellate justices who are guided purely by law. [Pressls' appeal](#) asks the appellate justices to correct the mistakes the lower court made when it issued its decisions.

INFORMATIONAL UPDATE -- Removal of Dead & Dying Trees in Project Boundary of Smith Mountain and Leesville Lakes – We have heard from multiple individuals in the past few months that faced issues with trees that were either dead or dying or removed within the project boundary. Some individuals contacted APCO to report a dead tree that was presenting a danger to buildings and individuals. APCO informed these individuals they would need to sign an APCO permit to remove the tree and replace that tree with new vegetation in accordance with Shoreline Management Plan criteria. All costs would be the responsibility of the property owner.

In other cases, property owners had contacted APCO for an inspection prior to the sale of their property. APCO alleged that a tree had been 'illegally' removed from the project boundary and that the owner would have to 'mitigate' for the loss of the tree by planting new trees in accordance with Shoreline Management Plan criteria and sign a permit. Again all costs would be the responsibility of the property owner.

In each case APCO stated that either the dead tree or missing tree was in the project boundary. It is the most fundamental principle of the American legal system that the party alleging the complaint bears the responsibility of providing proof. However, APCO flips this basic principle on its head and requires property owners to prove their innocence either by surveying the land or providing other 'acceptable' proof—all at the owner's expense.

Once again APCO misrepresented its license responsibilities to these individuals. APCO personnel failed to inform these individuals about **Standard License Article 20** of their current federal license, which requires APCO to remove dead trees at APCO's expense. It's also noteworthy that a copy of APCO's federal license is not posted on their website: www.smithmtn.com so that the public can easily access that information.

Unambiguous Language from APCO's Current License Article 20. *"The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations." (Emphasis Added)*

"Further, the provision of Article 20 pertaining to the removal of dead trees does not require a licensee to remove all such trees; rather, a licensee is only required to remove dead trees that pose a hazard to project operations, public safety, or navigation." See, e.g., Wolverine Power Corp., 85 FERC ¶61,066 (1998).

Do Your Property Rights Apply Here—Absolutely. APCO has no legal regulatory federal power to directly require a property owner to do anything. APCO's federal license simply documents APCO's responsibilities and obligations to its licensing authority FERC. APCO's only recourse is to go to a court of law and prove to that court that an individual property owner has violated APCO's flowage rights. Recall that APCO's limited property rights are detailed in its flowage easement. Consequently, APCO would have to prove that removing a dead tree somehow limits its right to flood property and operate and maintain their dam and power station. Nowhere in that flowage easement does it require individuals to get a permit from APCO to remove a tree or to replace trees/vegetation in the project boundary, to adhere to the Shoreline Management Plan or to adhere to APCO's federal license. In fact, nowhere in the flowage easement do the phrases 'project boundary,' 'federal license' or Shoreline Management Plan' even appear.

What Can One Do. Basic rule, make APCO prove it has the necessary property rights by demanding they provide you with a copy of the flowage easement applicable to your property. Next if there is a dispute that a tree lies within the project boundary, demand that APCO provide a survey from a surveyor licensed in the Commonwealth of Virginia detailing the location of the tree(s) in question. If APCO states that you as the property owner removed vegetation, have them provide proof when the vegetation was removed and by whom. Even if the disputed tree is in the project boundary, demand that APCO prove its removal impacts its ability to flood and operate and maintain the dam and power station. Lastly, do not sign any document APCO provides you, until you have read it, understand it and have had it reviewed by a competent attorney that can advise you of the differences between APCO's permit and your property rights.

DONATIONS ARE NEEDED – We need your continued financial support to continue these legal fights. Everyone will benefit from these victories and it's only right that everyone shares the cost of this legal defense of our property rights. For those that have already signed APCO's permits and encumbered your property rights, victory will mean the terms of the flowage easement holds precedence over the permit and render any conflicts invalid. 100% of your contribution goes to fund legal expenses. CURB Officers and Directors are legally bound not to financially benefit. Please consider making a donation to support the ongoing legal effort and education programs. CURB is a registered 501c (4) not-for-profit Virginia corporation. Your donations to support CURB efforts are not discoverable and remain anonymous. Use the donate button on the first page of this update. Thanks for your continued support. *For Our (Your) Property Rights ...*

ELIMINATE IGNORANCE – Before you agree to sign any APCO's property stealing revokable permits, at least read the permit and your flowage easement. Seek the professional advice of a competent attorney. We know several. If you can postpone efforts for another few months, do so to avoid signing away your property rights without being compensated. Remember APCO will allow you to maintain or repair your dock without interference, so long as you don't change its footprint. Be patient, vigilant and 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](#) [APCO Manipulated the Judicial System](#)

Bill Brush