

Comments to FOIA Council  
Virginia General Assembly Building  
Sixth Floor  
Richmond, Virginia

Tuesday, August 20, 2013

Mr. Chairman, members of the subcommittee, guests, thank you for this opportunity to speak with you regarding your deliberations that would make the Virginia State Corporation Commission subject to the requirement of the Virginia Freedom of Information Act. I am here today to encourage your strong support of that change in Virginia statutes.

My name is Margaret Nelson Fowler. I live at 406 River's Edge, Williamsburg, VA. I am a retired financial industry executive, at one time based here in Richmond, where my last positions before retirement was as president of TransCommunity Investment Advisors, and Head of the trust departments of the Bank of Powhatan, Bank of Louisa and the Bank of Goochland, all subsidiaries of TransCommunity Financial. I am a past president of the Richmond Society of Financial Analysts, now called CFA Virginia. I am currently a civic volunteer having just completed board positions with the Williamsburg branch of Preservation Virginia and the Williamsburg Symphonia. I am a founding member of the Save the James Alliance, a group of concerned citizens engaged to stop the overheading of a 500 kV transmission line by Dominion Virginia Power over the most historic of stretches of the James River, America's Founding River and a segment recently designated by the National Trust for Historic Preservation as one of the 11 Most Endangered Places in America for 2013.

My interface with the State Corporation Commission has been at two levels. The first came years ago, when I interfaced regularly with SCC staffers in the Financial Services regulatory division about the procedures required in establishing a registered investment advisory. That interaction was very positive, helpful and uneventful. In a

highly competitive, but well regulated environment such as financial services, it is imperative that regulatory authorities at both the federal and state levels create and monitor adequate controls in order to maintain public trust and to attempt to prevent abuses of the systems. As recent events demonstrate, even with regulation, those who seek to abuse the system can succeed -- for a while. But, at the end of the day, there is extraordinary competitiveness within the financial services industry that affords the public a dizzying array of alternatives. I greatly appreciated the work of the Financial Division of the SCC and understand its necessary role in keeping charlatans at bay. But, remember, that supervision is of a highly fragmented, competitive environment where the public has significant market choices should one provider not perform. While the need for FOIA for this division may at times be additive to gain a complete picture of events, the easy availability of public information makes the demands for inner workings, somewhat less imperative. However, such is not the case with public companies who have a regulated monopoly component, where by definition there are no alternatives to the public for substitutes, the inclination for secrecy is great, the status of invincibility becomes second nature and the sums of money that can be thrown around to protect their lofty realms are immense, unrelenting and, ultimately, likely corrupt, intentionally or not.

When Dominion Virginia Power announced about 18 months ago that they planned to build a 500 kV transmission line from their Surry Nuclear plant, across one of the most historic and decorated segments of the James River, those of us involved with the cultural and historical uniqueness of the Historic Triangle were at first thunderstruck by their site choice, then angered and, ultimately, engaged to fight it. We, naively, assumed that electrical engineers just couldn't appreciate what they were about to destroy in their single-mindedness to fix something that may or may not need fixed. (I can say that. I live with an electrical engineer.) And, I believe that still is part of our particular problem, but in our attempt as private citizens, the ones that Dominion refers to as the "Predictable Concerns," to fight this blight across the James, we learned how this game is played. The game is hardball. The weapon is cash.

And so, the battle was joined, I suppose. They have attorneys. We have attorneys. They have money. We don't have money. But, we have experts in the fields of Early America history, among them the preeminent historical archaeologist of America, environmentalists, and all of the other Predictable Concerns. We strategize. We lay down, what seems to all of us, a no-brainer case for submerging this power line at worst, and at best, moving it somewhere else. We attended public hearings, one in Williamsburg in October, where all three SCC Commissioners were present. The meeting was conducted by the assigned SCC hearing examiner, Michael Thomas. We made our statements. We felt encouraged somewhat that the hearings, at least, were to be on level playing fields. We had a second hearing. This time at the SCC, here in Richmond. There was much emoting and gnashing of teeth, but there was also, significantly, important testimony by some of the world's experts regarding the historic uniqueness of what was about to be changed forever if the construction of these towers went through as planned. Hearing Examiner Thomas clearly heard and understood the story of impending peril. His comments that January day are a matter of public record. He made it quite clear that, within the context of the law, the impact to historic properties would not be taken lightly in his deliberations, and he gave "the company," as he referred to Dominion, specific metrics he wanted examined in a most precise way as part of their eventual case. Hearing Examiner Thomas vanished the next week. Vanished. He was summarily removed from the case, with only some boilerplate language about the reassignment being within the authority of the Hearing Examiner Supervisor based upon office case load. While none of us was truly naïve when all of this started, we knew that when Mr. Thomas disappeared we had reached a new level of low down. This time we were stunned that this type of event could be so blatant, and yet we had no recourse of permissible challenge, particularly because the SCC did not need to comply with FOIA. Our worse fears were confirmed when upon further discussions with private practice attorneys who have practiced before the SCC for decades, we learned that they had NEVER heard of a hearing examiner being replaced. EVER.

We were aware from an earlier expert witness disclosure that the Commission had copies of documents provided by an outside firm that purported to undermine Dominion's case for methodology and cost. It was when I was preparing a FOIA request for that document that I first discovered that the commission does not fall under FOIA requirements. When we tried to find out what happened to HE Thomas, we were stonewalled. When Dominion sought to label many of their evidentiary documents proprietary, we were thwarted. Our ability to build our case was stymied at every turn by our inability to access necessary information that we know the SCC has. And, yet why?

Through course of business, through the writing of protective legislation, through the years of mundane and highly technical proceedings, those within the Commission tasked with the oversight of a regulated monopoly, become, perhaps, unintentional compatriots of the companies they regulate. The public hearings are a necessary evil because we outsiders know nothing, don't understand the complexities, can't grasp the details, and so they tolerate our intercession on behalf of the real world, but only to wait patiently while they check off their boxes so they can get on with glibly ignoring the so-called Predictable Concerns. Besides they have more money. They can wait.

Which brings us to the essence of things. The money. Publicly traded utilities have regulated segments, of course, that earn, even under regulation, extraordinary amounts of money. But, the for-profit components of those same firms can and do walk a narrow line between traditional corporate activities and those that would not be permitted in a regulated environment. It is here that the real weight is thrown around, blindly, ostentatiously, to PACs, to prominent non-profits in the locations of their next intrusions. Always to grease the rails. A common practice in politics. I'm not naïve. But, it is in the very nature of a nearly pure monopoly who works very hard to maintain that status by making everything as opaque as it can be that transparency is most needed. There are no other overseers other than the SCC, who should be the entity grounding these utilities in the reality of the needs of the rest of the Commonwealth, rather than routinely enabling their take no prisoners behavior. And to the extent they become lulled into being nothing more than a proxy business line for a utility the size of Dominion, their

role becomes harmful, not helpful. Without the checks and balance provided by the daylight that comes from knowing they must abide by FOIA both the SCC and the regulated monopolies they oversee grow only more insuperable in their own minds. Then the question will become, who regulates the regulator.

Thank you for your time.