

VIRGINIA:

BEFORE THE VIRGINIA SUPREME COURT
APPEAL FROM THE STATE CORPORATION COMMISSION
At Richmond

DOUGLAS ROBERT JOHNSON)
)
)
 Appellant)
)
 v.) Record No. 091703
) SCC Case No. CLK-2009-00014
)
 VIRGINIA STATE)
 CORPORATION COMMISSION)
)
 and)
)
 FLUVANNA COUNTY BOARD OF)
 SUPERVISORS)
)
 and)
)
 LOUISA COUNTY BOARD OF)
 SUPERVISORS)
)
 and)
)
 JAMES RIVER WATER)
 AUTHORITY)
)
 Appellees)
)
)
)
)

AMENDED MOTION TO INCREASE RECORD

COMES NOW your Appellant, Douglas R. Johnson, pro se,

and sets forth the following as his Amended Motion to Increase Record in support of his appeal from the order of the State Corporation Commission dated April 21, 2009 that issued a Certificate of Incorporation for the James River Water Authority; and deem the Certificate of Incorporation of the James River Water Authority void *ab initio*; as follows:

Explanation of Amendment

i. The Objection to the Designation of the Record and Motion to increase the Record has merit in that certain items were not before the Commission on April 21, 2009, the date of the order in question. Item 6 below is changed to delete those items from this Amended Motion to Increase the Record.

ii. Item 3 below, however, must be included as they clearly should have been considered by the Commission but were concealed from and or ignored by and or rejected by the Commission when the Order was issued. The rules clearly state that rejected documents are to be included in the Record. § vs-cr-5:21 (e) clearly states that "all exhibits accepted or

rejected" should be included.

Text as Amended

1. The following items are part of the official record forwarded by the Commission on August 21, 2009:

A. James River Water Authority - Articles of Incorporation.

B. James River Water Authority - Commission Order Issuing Certificate of Incorporation.

C. James River Water Authority - Expedited Service Request Form.

D. James River Water Authority - Letter to Mr. Peck from Hoffman Re: Articles of Incorporation of the James River Water Authority.

E. Notice of Appeal of Douglas R. Johnson.

2. There are two issues I see at this time with the above listed items:

A. The date stamp on the notice of appeal is not correct but I do not see the significance of that inaccuracy.

B. The Expedited Service Request Form refers to "Schedule A" which is part of the instructions

to that form and thus the entire form, including instructions must be included as part of the record.

3. The following items should have been part of the record forwarded by the Commission on August 21, 2009:

A. Letter to Clerk of Commission from Douglas Johnson of April 17, 2009 which included the Court Order dated April 16, 2009. (A copy of this document with attachments was filed on April 30, 2009 with the Commission under case CLK-2009-00012 as Exhibit B of the Affidavit.)

B. The Complaint, filed on April 20, 2009 with the Fluvanna Circuit Court as case 09CL81, naming the Commission as one of the defendants. (A full copy with attachments was included as Exhibit D of the above mentioned Affidavit.)

C. The Motion for Injunction, filed on April 20, 2009 with the Fluvanna Circuit Court as case 09CL81, naming the Commission as one of the defendants. (A full copy with attachments was

included as Exhibit E of the above mentioned Affidavit.)

4. The above three items were clearly objections to the Order which were made before the Order was entered and clearly all three were know to those responsible for the Order.

5. Vscr-5:32(c)(2) and (3) refer to "all tribunals that have considered the case" and "other incidents of the case germane to the questions presented." This case started at the Fluvanna Board of Supervisors who were directed by law to take certain actions which are detailed elsewhere and a legal question arose. The proper procedure would have been to get a ruling from the court on that question. Instead, the Board usurped the court's authority and made the decision itself. The citizens who were directly harmed by that decisions went immediately to the Fluvanna Circuit Court for redress in two separate cases, 09CL61 and 09CL81. In an obvious effort to flee the jurisdiction of the Court, the Fluvanna BOS filed for expedited service getting the subject order in less than 24 hours. The

requested additions to the record will demonstrate this along with proving the appeal.

6. Additional items not included above were previously requested to be included with the record but are listed here only to indicate that they exist and will only be referenced in a brief history of the events leading up to the filing with the Commission on April 21, 2009:

A. Minutes of March 18, 2009 Fluvanna County Board of Supervisors (BOS) meeting.

B. Citizen Petition of March 18, 2009.

C. Audio transcription of March 18, 2009 BOS meeting.

D. Petition Form filing with Clerk of Fluvanna Circuit Court March 19, 2009 including all attachments.

E. Acceptance Form with any and all attachments issued by Clerk of the Court on March 24, 2009.

F. Audio transcription of April 1, 2009 BOS meeting.

G. Minutes of April 1, 2009 Fluvanna County

BOS meeting.

H. Second Citizen Petition - Copy submitted to the Fluvanna Circuit Court on afternoon of April 15, 2009, including all documents submitted with petition.

I. Second Citizen Petition - Copy submitted to the Fluvanna BOS at the evening meeting of April 15, 2009, including document submitted with petition.

J. Audio transcription of April 15, 2009 BOS meeting.

K. Minutes of April 15, 2009 Fluvanna County BOS meeting.

L. Report by County Administrator given to BOS at April 15, 2009 meeting that Citizen Petition signatures exceeded the required ten percent (10%) of qualified voters.

M. Minutes of April 20, 2009 meeting of Louisa County BOS.

N. Certification of Fluvanna Registrar that Second Petition signatures also exceeded the

required ten percent (10%) of qualified voters.

7. The subject Order is a result of the Virginia Water Authority Act which says:

§ 15.2-5102. One or more localities may create authority.

A. ... The ordinance, resolution or agreement creating the authority shall not be adopted or approved until a public hearing has been held on the question of its adoption or approval, and after approval at a referendum if one has been ordered pursuant to this chapter.

and

§ 15.2-5105. Hearing; referendum.

... If ten percent of the qualified voters in a locality file a petition with the governing body at the hearing calling for a referendum, such governing body shall petition the circuit court to order a referendum in that locality as provided in this section.

and

§ 15.2-5107. Filing articles of incorporation.

After adoption or approval of an ordinance, resolution or agreement creating an authority, the governing bodies of the participating localities shall file with the State Corporation Commission the authority's articles of incorporation.

and

§ 15.2-5108. Issuance of certificate or charter.

The State Corporation Commission shall issue a certificate of incorporation or charter to the authority if it finds that:

1. The articles of incorporation conform to law; and

2. The estimated costs and rates for services of the proposed projects are fair and equitable, and have been advertised under § 15.2-5104 or subsection A of § 15.2-5156, as applicable.

Upon the issuance of the certificate or charter such authority shall be conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter.

(Code 1950, § 15-764.8; 1950, p. 1316; 1962, c. 623, § 15.1-1246; 1973, c. 478; 1983, c. 80; 1984, c. 239; 1997, c. 587; 2009, c. 473.)

8. The Clerk of the Commission says, in item 7 of Clerk's Response to Petition of case CLK-2009-00012, that the Commission issued the Certificate of Incorporation according to § 13.1-820 and this contradicts the actual Articles of Incorporation of the James River Water Authority.

9. The basic logic is that the Articles need to conform to law, specifically the law the filing is done under, namely the Virginia Water Authority Act. That law says that for the Articles to conform to law they

need to be acted on by the Fluvanna BOS and the Louisa BOS. The error this appeal is based on started at the Fluvanna BOS when they failed to act on a citizen petition calling for a referendum. While that action is disputed, it is still the main error. That error was brought forward by concealing the dispute from the Commission and by using the filing as a attempt to flee the jurisdiction of the court.

Wherefore Appellant, Douglas R. Johnson, pro se, respectfully moves for granting the relief of this Motion to Increase the Record with all of the items specified.

Douglas R. Johnson, Pro se

DOUGLAS R. JOHNSON, PRO SE
571 Long Acre Road
Palmyra, VA 22963
(434) 286-6984 fax (206) 600-6984

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was mailed the 12th day of November, 2009, to:

Frederick W. Payne, Esquire 434-977-4507
Fluvanna County Attorney
414 East Jefferson Street
Charlottesville, VA 22902
Counsel for Respondent Fluvanna County Board of Supervisors

Gregory Hoffmann, Esquire 540-967-4582
County Attorney for Louisa County
PO Box 160
1 Woolfolk Avenue
Louisa, VA 23093.
Counsel for Respondent Louisa County Board of Supervisors

Robert L. Hodges, Esquire 804-775-7513
McGuire Woods
James River Water Authority
One James Center
901 East Cary St.
Richmond, VA 23219-4030
Counsel for Respondent James River Water Authority

Jonathan B. Orne, Esquire 804-371-9671
ATT: Philip R. DeHass, Esquire
Office of General Counsel
State Corporation Commission
Tyler Building, 10th Floor
1300 East Main Street
Richmond, VA 23219
Counsel for State Corporation Commission

Douglas R. Johnson, Pro se

DOUGLAS R. JOHNSON, PRO SE
571 Long Acre Road
Palmyra, VA 22963
(434) 286-6984 fax (206) 600-6984