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Feds evaluate public worries about pipeline

FERC responds to Sen. Kaine

BY JOHN BRUCE • STAFF WRITER

MONTEREY — The federal agency overseeing the proposed Atlantic Coast Pipeline downplayed Sen. Tim Kaine’s concerns about public input, despite criticism over scoping meetings, garbled transcripts, and unanswered questions.

Federal Energy Regulatory Commission chair Norman Bay took a little more than a month to respond to Kaine, whose Aug. 24 letter depicted the regulatory process as imbalanced and partial to the applicant, ACP.

The applicant’s failure to answer questions has formed public impressions that the proposed pipeline is a done deal and that FERC is fast-tracking the proposal without allowing time for citizen input, the senator said. By posting scrambled scoping meeting transcriptions, FERC has further fed perceptions that it does not take public comment seriously, Kaine pointed out.

Bay replied that FERC has been taking comments since late February and provides multiple avenues for continued public input besides scoping meetings. The agency has received more than 3,000 individual comments so far about the proposed ACP, he said.

FERC “will continue to accept and consider comments from any interested stakeholder throughout the pre-filing and application review process. Accordingly, I believe that the commission’s process provides sufficient time for stakeholders to provide their input,” Bay said in his Sept. 30 letter, 12 days after ACP ended its pre-filing process by formally filing an application.

Bay said FERC staff has fixed the scoping meeting issues and is correcting the transcripts.

“With respect to the manner in which staff conducts scoping meetings, commission staff has evaluated the methods for these meetings and the procedures for both the meeting notice and speaker sign-up. Staff has since established procedures to ensure that signup times, speaking procedures, and related matters are clearly detailed in our public scoping notices.

“I am aware that there are errors in the transcripts from some of the scoping meetings and assure you that staff has been working to correct them. The corrected versions will be posted to the docket once the court reporter and staff are satisfied that the transcripts provide an accurate account of the meetings,” Bay said.

“The timing of the filing of an application is not controlled by the commission. An applicant may file an application at any time during the pre-filing process. To date, ACP has spent over nine months in the commission’s pre-filing process, and it filed an application on September 18, 2015.

“In reviewing this application, commission staff will independently analyze the environmental concerns that have been raised by landowners, interested parties, governmental and resource agencies, including construction within karst terrain and steep slopes, construction across conservation easements and waterbodies, co-location with other utilities, public safety, and impacts on endangered species,” he said.

No reference was made to the U.S. Forest Service objections concerning potential impacts on the Cow Knob Salamander habitat.

Bay continued, “Staff’s review will also include an analysis of the cumulative impacts from ACP’s project, the Mountain Valley Pipeline, and the WB Express Pipeline, as well as any available information on the Appalachian Connector Project, which has not yet begun the review process at the commission. Commission staff will assess the project’s impacts on the Appalachian Trail and the Blue Ridge Parkway based on independent research and field work, as well as on the National Park Service’s April 28, 2015, comments officially filed with the commission. Since December 2014, staff has both informally and formally requested that the National Park Service participate as a cooperating agency in the environmental review of the project. The park service has not yet replied.

“As in any commission matter, please be assured that we strive to make our review of proposals accessible and transparent to the public,” Bay said.

Bay did not respond to Kaine’s questions about whether FERC would pursue a Programmatic Environmental Impact Statement (PEIS), which differs from a required, project-specific EIS, including a cumulative impact analysis.

According to the Southern Environmental Law Center, a PEIS would address the ACP, as well as the Mountain Valley Pipeline, the Appalachian Connector Pipeline, and the WB Express Project in a comprehensive examination of the impacts of pipeline development in the Blue Ridge and Appalachian Mountain region of Virginia and West Virginia. Such a study is being requested by citizens groups, including Highlanders for Responsible Development.

The FERC chair replied to a similar inquiry from a constituent of U.S. Rep. Bob Goodlatte concerning the MVP, and explained why a PEIS is unlikely.

“Because the commission does not direct the development of the gas industry’s infrastructure, either on a broad regional basis or in the design of specific projects, and does not engage in regional planning exercises that would result in the selection of one project over another, commission staff has not determined that it would be appropriate to prepare a programmatic

EIS,” Bay said. “However, if Mountain Valley files an application with the commission, it is anticipated that staff will prepare an EIS for the project, to be published and distributed for public comment, that will analyze both the project-specific impacts of the Mountain Valley Project and the cumulative impacts of other actions affecting the environment in the region.”

Dominion spokesman Jim Norvelle said an ACP resource report filed with FERC already includes a cumulative impacts assessment, which, he explained, is different from a PEIS, and there could be some confusion between the two due to media attention to PEIS.

That assessment concludes, “Due to the implementation of specialized construction techniques, the relatively short construction timeframe in any one location, and carefully developed resource protection and mitigation plans, minimal cumulative effects are anticipated when the impacts of the ACP ... are added to the projects identified.”

Those projects mainly include work associated with the ACP. Little mention is made of the Mountain Valley Pipeline, other than in context with the Appalachian Trail, and if ACP and MVP move forward together, then there might be an impact on availability of labor.

Kaine wrote FERC Aug. 24 that he takes no position on whether the proposed ACP should be approved. He said he listened to concerns of Virginians along the proposed ACP corridor pertaining not just to the project but “the quality and thoroughness of the public input process by FERC and the applicant companies.”

The senator highlighted issues for FERC and the applicants to consider. He said FERC must require builders to make the utmost effort to minimize impacts and “empower the public to verify these efforts by ensuring that all relevant information is made available and that there is ample opportunity for public input and comment.”

Kaine cited “built-in imbalance” in the FERC process that municipalities and citizens groups believe is fast-tracking the proposal without allowing time for stakeholders to comment. “A company wishing to build a pipeline has personnel with deep experience in this complex regulatory process and for whom this is a full-time job. By contrast, citizens with questions about this project are not experts in the energy industry but rather are learning about this project on their nights and weekends,” Kaine said.

By not disseminating project information as widely as possible and not answering questions quickly and substantively, “it contributes to a local perception that the project is a done deal and that FERC and the applicants view the public comment process as a pro-forma, box-checking exercise,” the senator said.

Specific incidents may be contributing to this impression, he explained. “Constituents brought to my attention a list of errors in the transcripts of the FERC scoping meetings. These were not stray typos but rather hundreds of erroneous words that made large portions of testimony read as nonsensical,” Kaine said.

One example was the word “karst,” transcribed as “cars.”

“To the citizens who took time out of an evening to offer public comment, in many cases after waiting a long time to speak, the discovery of these errors suggested that FERC was not taking public testimony seriously,” Kaine said.

One of the most frequent concerns is the degree to which FERC analyzes individual projects within the larger regional context, he said. “It is important that the ACP be measured side-by-side with the impact of multiple new pipeline rights-of-way,” Kaine said. He called on applicants “to explore co-location of right-of-way to the greatest extent possible.”

Citizens are asking whether a PEIS for all four projects would better capture the environmental impacts throughout the region than four separate ones. “While I understand that FERC has rarely done this in the past, I would be interested in whether the agency does or does not believe it would be worthwhile in this case, and why,” Kaine said.

In a similarly strongly worded letter dated April 7, Kaine echoed the complaints of people who attended scoping meetings that Dominion gamed the system by stacking speakers known to be in favor of the project ahead of others, so TV crews would record them during the first half-hour of the wellattended meetings. Accordingly, televised reports inaccurately portrayed audiences as favoring the pipeline.

Responding to similar concerns expressed earlier by Sen. Mark Warner was former FERC chair Cheryl LaFleur, who stepped down shortly after saying the agency was reconsidering its protocol for scoping meetings as a result of the concerns. Bay, the former head of FERC’s office of enforcement, succeeded LeFleur in mid-April.

The proposed \$5 billion line would carry natural gas from West Virginia across Highland to Hampton Roads and southern North Carolina.

FERC has been accepting public comments and interventions about the pipeline project since Feb. 27. Comments can be made electronically by accessing <https://ferconline.ferc.gov/QuickComment.aspx> or by mail to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.