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Pipeline opponents urged to fight on

BY GEOFF HAMILL • STAFF WRITER



Environmental advocates spoke about concerns with the proposed Atlantic Coast pipeline at a public meeting last Wednesday in Bolar. Pictured from left are: Greg Buppert, with the Southern Environmental Law Center; Rick Webb, with the Dominion Pipeline Monitoring Coalition; Joe Lovett, with Appalachian Mountain Advocates; and Lewis Freeman, with the Allegheny-Blue Ridge Alliance. Also speaking was landowner advocate Nancy Sorrells of Augusta. (Recorder photo by Geoff Hamill)

BOLAR — The proposed Atlantic Coast pipeline has powerful supporters, including President Donald Trump and Virginia Gov. Terry McAuliffe, but environmental advocates say the fight is far from over to stop construction of Dominion Resource’s 42-inch natural gas pipeline through Bath and Highland counties.

During a public meeting in Bolar last Wednesday, representatives of five environmental groups urged attendees to get involved in the pipeline fight and provided advice how to do so. Two groups, Voices From Bath and Highlanders for Responsible Development, sponsored the event jointly.

Representatives speaking included: Greg Buppert, senior attorney with the Southern Environmental Law Center; Rick Webb, Dominion Pipeline Monitoring Coalition program coordinator; Joe Lovett, attorney and founder of Appalachian Mountain Advocates; Lewis Freeman, Allegheny-Blue Ridge Alliance executive director; and Nancy Sorrells, with the Augusta County Alliance.

The five environmental advocates provided information on the Federal Energy Regulatory Commission's Dec. 30 publication of a draft environmental impact statement for the ACP, and agreed FERC had issued an incomplete, inaccurate, and dismissive statement.

Buppert gave an overview of the draft EIS and how SELC is challenging it. The attorney noted FERC has never declined to issue a permit for a pipeline project.

"This environmental impact statement looks a lot like FERC's other environmental impact statements, which is, it's just not very good," he said. "It glosses over important impacts. There's missing information. There's information that is deferred. But this is the type of impact statement that FERC produces. We do a lot of work with the (U.S.) Forest Service. The Forest Service does a much better job on its impact statements and there is at least some suggestion, from correspondence that the Forest Service submitted to FERC and Dominion right before Christmas, that it is still waiting on significant amounts of missing information.

"FERC is the agency writing the document, but this EIS is also necessary for decisions that are made by other federal agencies about this project," Buppert continued. "The Forest Service is probably the most important one. They will be making the decision whether the pipeline can cross national forest lands and they will be relying on this environmental impact statement. The Army Corps of Engineers will also rely on this document, so it's not just FERC, but other agencies involved.

"There is no obligation for the federal agency to choose the project with the least environmental impact," he added. "In this process, FERC could find that the pipeline has a lot of significant impacts and still decide to give it a permit. The obligation of the agency is to look at the impacts and consider them fully, but it's not a substantive requirement that they choose the least damaging alternative."

Buppert said the need for the ACP has been exaggerated by an incestuous business organization created by Dominion. "Our first critical focus will be on the need for this project," he said. "There's evidence that this project is not needed to meet the demand for natural gas. The arrangement of the entities, both building the pipeline and buying the gas, is that they're all affiliates and subsidiaries of Dominion Resources. You don't need an advanced degree in economics to know that's not an arm's length transaction that's accurately reflecting the market. One area where we have spent some time and will be spending more time is trying to unravel that affiliate relationship with Dominion and also the larger question about the necessity of the project."

The SELC attorney said more capacity is available in existing pipelines. "They're about half full," he said. "They're operating at about 50 percent capacity."

Bupert said SELC is particularly interested in FERC’s analysis of other systems that could obviate the need for the ACP, as currently proposed. “An alternative that we’re very interested in are the system alternatives — the existing pipeline infrastructure that might be used to meet the demand for natural gas that the ACP would serve. The agency has to look at those alternatives; it also looks at the no-action alternative. It considers co-location of various pipeline proposals and there are a few other alternatives in the document.”

Among the alternatives discussed in the draft EIS is a merger or co-location of the ACP with the proposed Mountain Valley pipeline, a plan that would avoid Bath and Highland counties completely.

The draft EIS reads: “The merged system alternative using 48-inch-diameter pipe would hold several environmental advantages over constructing both projects separately, including increased collocation with existing utility rights of way, avoidance of the Monongahela National Forest and George Washington National Forest, reduced crossings of the Appalachian National Scenic Trail and the Blue Ridge Parkway from two to one, reduced number of access roads and contractor/pipe yards impacted, and less construction in karst topography. Merging the pipeline systems would also reduce overall land impacts by minimizing the number of access roads and contractor/ pipe yards used, and by reducing the amount of permanently maintained pipeline right of way.”

However, FERC rules out that more environmental-friendly option. “When the environmental factors, technical feasibility, and ability to meet the purpose and need of the projects are cumulatively considered, we do not find that the merged system alternative holds a significant advantage over the proposed actions and have eliminated it from further consideration,” the draft EIS reads.

“The goal would not be, ‘Don’t build it here, built it somewhere else,’” said Buppert. “None of us want to say that. But pointing out problems with the preferred route may convince FERC, in some situations, to send Dominion back to the drawing board and re-draw the route. Those delays could be significant. Delay is beneficial.”

Webb noted an obvious falsehood in the draft EIS. “Here, it says the engineering status and the permitting status are done,” he said. “Both of those are completely false. The engineering is far from being completed and none of the permitting is done.”

Webb said the U.S. Forest Service and state agencies have the power to block the ACP, even if FERC issues a certificate of public convenience and necessity.

“The Forest Service has to change the forest plan,” he explained. “Tens of thousands of people provided input into that plan, and they’re being asked to change it based on information from this EIS process. This is not a done deal. They have to have a special use permit. They have to have authorization to build on the national forests. There’s a sequence that has to be followed. The EIS has to be done and it has to be satisfactory for the Forest Service. It has to provide the information they need to make a responsible decision according to their own policies, established

by federal law. They have to plan amendments and then they have to issue a special use permit. So, it won't go so fast. It's not over with when FERC issues a certificate.

"The Forest Service is under all kinds of pressure to somehow expedite this however they can," Webb added. "But there are several laws involved here and, so far, the rule of law does apply."

Webb said the Virginia Department of Environmental Quality must approve a sediment control plan for the ACP, although it is impossible for the project to be built and operated within legal environmental standards. The scientist condemned DEQ's failure to properly monitor compliance plans in the past, but noted there had been some improvement in recent years.

FERC completely dismissed concerns about the potential for water contamination in cavernous karst terrain, Webb said. "It's not just where the pipeline crosses. Dominion is only looking at karst features within a certain distance on either side of this corridor. It's everybody downstream — their water supply is at risk. That's the cold water that makes the Jackson River what it is. Once you get that mud into the subterranean karst system, it takes a long time for it to work its way out."

Webb urged residents downstream from any proposed pipeline activity to write to FERC before the April 6 deadline and request thorough study of potential karst water pollution. "A judge is probably not going to stop a project involving hundreds of construction workers for the sake of a fish or a salamander," he said. "But maybe they will where people are involved."

He said FERC fails to properly adhere to the National Environmental Policy Act because it improperly assumes a builder will comply with best management practices.

Lovett said ACP approval could mean additional pipeline construction through the area. "If there's a corridor established, that will be a corridor in the future," he said. "There will be a lot of gas coming out of West Virginia and Pennsylvania, going to the southeast, and you don't want this area to be the place where that corridor is established."

Appalachian Mountain Advocates plans to take the battle into the courts.

"We are going to sue FERC and FERC is going to issue this certificate — there is no question in my mind," said Lovett. "When it issues the certificate, it will do so in a fashion, I am confident, that does not comply with NEPA, section 404 of the Clean Water Act, section 401 of the Clean Water Act, and the Forest Service statutes and regulations."

Lovett urged residents to file comments to FERC prior to April 6 and to provide comments and information to his organization, Appalachian Mountain Advocates. "If you have some data and you think FERC isn't going to consider it, please let us know, because FERC is obligated to consider all of the relevant information. If they fail to consider it, that's a flaw and that's how we win."

The attorney said it was especially important for affected landowners to contact AMA to become a party to litigation against the pipeline. He advised affected landowners to not sell easements

and urged landowners to join with AMA and/or SELC to challenge the certificate after it is issued.

“We need people with standing to challenge FERC’s decision,” he explained. “What’s going to be an issue is whether people are harmed irreparably. If you sold that easement already, it’s going to be hard for you to join one of the groups that go into the challenge. The more we have, the better, because to get an injunction, you need an immediate, irreparable injury. If we don’t have anybody like that, even if we’re right about the law, the project will go forward while we argue about the law and it will be moot in the end.

“If you don’t sell, there are lawyers who will help you,” Lovett added. “Appalachian Mountain Advocates and Southern Environmental Law Center — we don’t charge anybody for anything we do.”

When asked which pipeline would cause the greatest environmental harm, Lovett said the Atlantic Coast Pipeline would be more harmful than the Mountain Valley Pipeline. “I don’t think any one of them is necessary,” he said. “We view it as they are equally bad and neither should be built. But I think, from a rational perspective, probably the ACP is more harmful because it passes through more sensitive areas. They’re both terribly harmful.”

Sorrells urged landowners to not sell easements and discussed tactics being used by Dominion’s land agents. “This is not a done deal,” she said. “The land agents who approach you will tell you it’s a done deal and you’d better sign. It’s your right — you don’t even have to talk to them. The spin they put out is pretty incredible. What they try to do is divide and conquer. They’ll say ‘Don’t tell your neighbor, but we’re going to give you a better deal.’ They’ll say if you don’t sign, you’ll be flagged as troublemakers, or we’ll just move the pipeline off your property because your neighbors have signed.”

Sorrells said it was important for all concerned citizens to comment to FERC and provide information to the environmental groups on negative impacts of the pipeline plan. “We need to document everything because it’s going to be death by 1,000 cuts,” she said. “We don’t know which cut will be the one that will stop it, but we need to get all those cuts in there and build our case for what will happen after FERC issues a certificate.”

Sorrells distributed an Augusta Alliance information sheet that explains, “Dominion does not have the right to an easement through your property unless FERC grants it the power of eminent domain. That has not happened. Even if FERC ultimately grants Dominion the power of eminent domain (still far from certain), landowners have significant rights involving protection of their property to insure that they are paid the true value of the highest and best use of their property.”

The Augusta Alliance formed the Virginia Easement Action Team, a non-profit education and legal defense group, to assist landowners who do not wish to sell easements to Dominion. More information can be found at www.augustacountyalliance.org.

“We plan to do a press release and spread the word that we’re not going down quietly,” said Sorrells. “We’ve got a group going and we’re locking arms and we’re going to stand up to this.”

Freeman provided an ABRA handout with advice how to get involved to oppose the pipeline. ABRA urges citizens to file written comments and verbal testimony to FERC.

“We hope all of you leave here tonight with the resolve to file comments before April 6, which is the deadline,” said Freeman. “And, we urge you to testify to the court reporter, so that testimony is in the record.”

Citizen comments can be provided to FERC online at ferc.gov under the link to Documents and Filings. Letters can be mailed to Nathaniel J. Davis Sr., Deputy Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, D.C. 20426.

Any interested citizen can provide verbal testimony to a court reporter on Feb. 23 at the Holiday Inn in Staunton; Feb. 28 at the Highland Center in Monterey; March 1 at the Gandy Dancer Theater in Elkins; and March 2 at the Wellness Center in Marlinton, W.Va.

Other locations and dates for providing verbal testimony can be found on the ABRA homepage at www.abralliance.org, under the link to Information on the ACP Draft Environmental Impact Statement.