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Senators press for FERC reform

BY JOHN BRUCE • STAFF WRITER

MONTEREY — Virginia’s U.S. senators last week rolled out legislation at voter request to reform the U.S. Federal Energy Regulatory Commission.

The likelihood, if any, of relieving impacts on those affected by the Dominion-Duke Atlantic Coast Pipeline proposed to traverse environmentally sensitive Bath and Highland counties was unknown.

Sponsor Sen. Tim Kaine and co-sponsor Sen. Mark Warner crafted the legislation to strengthen the public’s ability to evaluate impacts of gas pipelines FERC considers, a news release from the senators stated, in describing S.1314, “A bill to amend the Natural Gas Act to bolster fairness and transparency in consideration of interstate natural gas pipelines, to provide for greater public input opportunities, and for other purposes.”

The Democratic lawmakers drew on constituents’ concerns while the agency has compiled environmental impact statements on incomplete routes of the proposed Atlantic Coast and Mountain Valley pipelines.

Each of the FERC reforms outlined is directly based on input submitted about ACP and MVP by Virginia residents to Kaine and Warner.

After introduction, the bill was read twice and referred to the Committee on Commerce, Science, and Transportation.

The bill would make it easier for the public to offer input and clarify the circumstances under which eminent domain should and should not be used.

Among other guidelines, the bill would require public comment meetings in every locality through which a pipeline would pass, at every stage of the review process, in order to minimize situations where individuals are forced to commute long distances with little time to comment.

Specifically, the legislation would:

- State that it is the policy of the United States that eminent domain be limited to situations in which the taking of property is for public, not private, use. This language is from a 2006 Executive Order by President George W. Bush clarifying the scope of federal eminent domain authority.
- Require a single, programmatic environmental impact statement (EIS) if two gas pipelines are proposed within one year and 100 miles of one another. FERC has categorically rejected this falls within its authority so far.
- Provide if there is more information that comes out after a draft EIS than is in a draft EIS, FERC must do a supplemental EIS, with another public comment period.
- Mandate public comment meetings in every locality through which a pipeline passes, at every stage in the process (draft EIS, final EIS, supplemental EIS) so members of the public do not have to drive long distances to meetings where they are only able to speak for just a few minutes.
- Specify that eminent domain takings of land under conservation easement be given fair compensation not just for the land value, but for the lost conservation value of the land.
- Ensure that plans to mitigate unavoidable impacts be subject to public comment so the public can verify that the mitigation is fair and proportionate.
- Require cumulative analysis of visual impacts on National Scenic Trails, including the Appalachian Trail, for multiple pipelines that cross the same trail within 100 miles.
- Prohibit any downgrading of National Scenic Trail scenic integrity requirements in current law if the project represents a net degradation to the trail.

“For two years now, Virginians have been sharing their views with me on the MVP and ACP,” Kaine said. “Many oppose these projects — some support them — but from listening to all sides, what is clear to me either way is that FERC’s public input process needs improvement.

“Driving two hours through the mountains to a public meeting at which you can speak for two minutes is not public input. Having 90 days to read and comment on 2,000 pages while a dozen other 400-page supplements are trickling out is not public input,” he said.

“FERC’s job is to adjudicate the public interest — especially when eminent domain is involved — and this requires taking public input more seriously. (Our) bill does not mandate MVP and ACP be built, nor does it block them. It simply takes eight steps — all based on ideas I heard directly from Virginians – to provide a fairer and more transparent basis for the federal government’s decisions about energy infrastructure,” Kaine said.

“I’ve heard from many Virginians with concerns about the complicated and cumbersome FERC public engagement process, and it’s clear to me that the current process needs to be made a lot more accessible and transparent,” Warner added. “Public participation in an agency’s public proceedings is one of the cornerstones of our democratic process, and our bill sets up a system

that ensures that every resident in every locality within the path of a proposed pipeline has a say at each step of the way.

Ron Tipton, president and CEO of the Appalachian Trail Conservancy, said, “This legislation is a big step in the permitting process for new interstate natural gas pipelines as it assures that the public has access to complete information on siting decisions. Moreover, the legislation provides improved direction to federal regulators in their decision-making regarding national scenic trails like the 2,189-mile Appalachian Trail and other public and private lands.”

U.S. Rep. Morgan Griffith (R-6th District) will introduce similar legislation in the House.

While Congress does not decide on the merits of individual gas pipeline projects, Congress provides the legal authority under which FERC is tasked with evaluating the benefits and drawbacks to energy infrastructure proposals.

Legislation from Virginia’s congressional delegation joins a proposal from the north aimed at improving public access to the federal regulatory process.

In May, U.S. Sen. Jeanne Shaheen of New Hampshire re-introduced the Public Engagement at FERC Act, a bill to amend the Federal Power Act and establish an Office of Public Participation and Consumer Advocacy. Warner was a cosponsor along with Sen. Al Franken (D-Minn.), Sen. Elizabeth Warren (D-Mass.), Sen. Maggie Hassan (D-N.H.), and Sen. Ron Wyden (D-Ore.).

“FERC’s decision-making greatly affects American citizens and small businesses, yet residents ... across the country must navigate a needlessly complicated and exit