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Pipeline plan can't move ahead, SELC contends

BY JOHN BRUCE • STAFF WRITER

MONTEREY — Unessential and non-compliant. The Southern Environmental Law Center is using these terms to argue the proposed Atlantic Coast Pipeline cannot be built as proposed.

SELC on Monday told the Federal Energy Regulatory Commission that Virginia law prevents Dominion from building the proposed ACP on lands protected by conservation easements held by the Virginia Outdoors Foundation. Dominion's proposed mitigation method of swapping the easements for one on Hayfields Farm in Highland is unprecedented and premature, SELC argued.

SELC said the pipeline would "destroy portions of 11 properties protected by conservation easements and effect the largest intrusion on these protected lands in the 50-year history of Virginia's conservation easement program. Like the forests on Shenandoah and Cheat Mountains, Atlantic's unwarranted threat to these ecologically significant private lands is another symptom of its carelessly planned effort to force the Atlantic Coast Pipeline through the steep forested mountains of the central Appalachians," SELC said.

On Oct. 26, FERC requested that Dominion file documentation that Atlantic is not precluded from establishing an easement on each VOF easement crossed. FERC requested the company identify any specific construction, restoration, and/or operation mitigation measures identified by VOF that would promote compatibility with the purpose and values of the easements.

On Nov. 9, Dominion submitted its response to FERC's request, but SELC said because VOF will not even consider Dominion's request to convert 11 easements until February 2017, Dominion cannot provide the documentation requested. Instead, Dominion offered only "an unconvincing argument" that it believes it will have met all relevant state statutory criteria for VOF's approval of the crossings if they are deemed to be conversions, SELC argued.

SELC called Dominion's expectation that it will satisfy the statutory criteria for conversion "premature," and said it ignores VOF's position, and is based on unsupported statutory interpretation. "Neither the conservation easement deeds nor state law provide an avenue for approval of construction of the Atlantic Coast Pipeline through the proposed route," SELC said.

SELC said the conservation groups it represents make three arguments: “First, the (VOF) explicitly stated that approval for construction of the Atlantic Coast Pipeline cannot be granted under the terms of the conservation easements because the pipeline will permanently impair conservation values. Second, the Atlantic Coast Pipeline fails to meet the unambiguous statutory requirements for conversion of a conservation easement under (the Virginia Open-Space Land Act). And third, because there is no path for approval for the pipeline to cross these conservation easements under state law, Dominion’s discussion of mitigation is premature.”

SELC submitted the comments on behalf of Shenandoah Valley Network, Highlanders for Responsible Development, Shenandoah Valley Battlefields Foundation, Natural Resources Defense Council, Augusta County Alliance, Cowpasture River Preservation Association, Dominion Pipeline Monitoring Coalition, Friends of Nelson, Piedmont Environmental Council, Rockfish Valley Foundation, Valley Conservation Council, Voices from Bath, and West Virginia Highlands Conservancy.

Dominion argued language in some of the easement deeds allows for construction. “This argument rests on an erroneous interpretation of a provision regarding utilities contained in some of the easement deeds and on misapplication of the general principle that easements can be modified by agreement of the Virginia Outdoors Foundation and a landowner. Neither argument has merit,” SELC said.

On Dec. 5, VOF filed a letter with FERC rejecting Dominion’s argument that pipeline construction could be permitted under the language of the easement deeds. “Atlantic appears to argue that this language is sufficient to justify construction of the Atlantic Coast Pipeline across these properties. But that cannot be true because the foundation has already determined that construction of the pipeline will impair the conservation values protected by all 11 conservation easements,” SELC said.

“VOF has stated since the very first consultation with (Dominion) that this project could not be completed on VOF open space land without impairing conservation values of the affected properties,” SELC said.

Dominion also suggested the easements could be “modified with the agreement of both the landowner and VOF” to allow for construction, but SELC said that falls outside the scope of the amendment provisions in the deeds. Those say amendments can be made “to enhance the property’s conservation values or to add to the restricted property,” neither of which the ACP would accomplish, SELC said.

Dominion argued the ACP would satisfy the requirements for conversion of open-space land, but SELC said the company “so distorts the relevant statutory language that the result bears no relation to the plain meaning expressed by the General Assembly.”

Dominion also contended the law provides a means of allowing projects like the ACP to co-exist with open-space easements. The VOF had told FERC that construction, maintenance and operation of the pipeline line is inconsistent with the open space protections.

“The foundation correctly recognizes that the only relevant question is ‘whether (Dominion) will have met the statutory requirements’ and the answer must be no,” SELC said, noting the law allows conversion of open space easements only when the requirements are met.

The ACP fails to meet those requirements “because it is neither essential to the localities which it would pass through nor in accordance with their current comprehensive plans,” SELC said, reiterating its request that FERC reject Dominion’s proposed route for the pipeline.