



## *ABRA Update #122 – March 23, 2017*

### **Court Rejects Law Suit Claiming FERC Bias Favors Pipelines**

A lawsuit claiming that the Federal Energy Regulatory Commission (FERC) is structurally biased in favor of approving natural gas pipelines has been dismissed by the U.S. District Court for the District of Columbia. The suit had been brought by the Delaware Riverkeepers Network, arguing that FERC's funding structure left the agency fundamentally biased toward approving pipelines. The lawsuit focused partially on the PennEast pipeline project in Pennsylvania but also made a broader argument that FERC faces a "structural bias" because its budget is offset by fees and annual charges from natural gas companies.

In her [March 22 opinion](#), U.S. District Judge Tanya Chutkan said:

Because the court finds there is no inherent structural bias or appearance of structural bias, Plaintiffs' purported examples of actual bias, which Plaintiffs offer as "evidence of the Commission's inherent bias" are not relevant to the court's analysis. Allegations of actual bias cannot create structural bias where the court determines there is none. The Budget Act on its face does not create a FERC funding mechanism that creates unconstitutional bias for the basic reason that approval of pipeline projects does not increase FERC's budget. Plaintiffs have not alleged facts upon which relief could be granted.

### **Only Two Weeks Remain to Comment on the ACP DEIS**

The April 6 deadline for commenting on the Draft Environmental Impact Statement (DEIS) for the Atlantic Coast Pipeline (ACP) is only 2 weeks away. Even if someone testified at one of the recent FERC comment sessions, they are urged to also file written comments, permitting them to provide more expansive views. To assist commenters, ABRA has prepared a guidance document: [The Draft Environmental Impact Statement for the Atlantic Coast Pipeline: What is it? What's in it? What you can do!](#)

### **VOF Files Supplemental Comments With FERC**

The Virginia Outdoors Foundation (VOF) wrote the Federal Energy Regulatory Commission (FERC) on March 10 reiterating its concerns over the proposed crossing of 10 conservation easements held by the VOF, but also setting forth several recommended conditions that should be imposed should the Atlantic Coast Pipeline be approved by FERC. The [VOF letter](#), noting that the FERC Draft Environmental Impact Statement referred to the proposed easement conversions as "minor," commented:

The VOF has consistently taken the position that construction, maintenance and operation of the interstate gas transmission line is inconsistent with the open space protections afforded

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by the subject easements. Therefore, the construction, operation and maintenance of the ACP will constitute a conversion of the easement property as outlined in Va. Code § 10.1-1704. VOF has stated on many previous occasions that the impact is very significant and by no means "minor".

## **Constitution Pipeline Challenge to Section 401 Denial Rejected**

A lawsuit challenging New York State's denial of a required certification for the Constitution Pipeline has been dealt a setback by the U.S. District Court of the Northern District of New York, which ruled that it "lacks subject-matter jurisdiction, because Constitution has not pleaded an injury in fact and thus lacks standing" to assert its claims.

The Constitution project, which originates in Pennsylvania and would cross 100 miles of New York State, had been granted a FERC permit for the pipeline on December 2, 2014, subject to receiving certain required approvals, including a water quality certification required by Section 401 of the Clean Water Act. New York State denied that permit on April 22, 2016 (after some construction activity had already begun in Pennsylvania). Constitution sought judgment before the District Court that the state permit requirements are preempted by the Natural Gas Act. The Court's [March 16 decision](#) dismisses Constitution's complaint. A separate lawsuit by Constitution for review of the New York State denial of Section 401 certification remains pending before the United States Court of Appeals for the Second Circuit.

## ***In the News:***

### **Local/Atlantic Coast Pipeline**

#### **Dominion charged with ignoring USFS data requests**

- The Recorder – 3/23/17

[http://www.abralliance.org/wp-content/uploads/2017/03/Dominion\\_charged\\_with\\_ignoring\\_USFS\\_data\\_requests-Recorder\\_20170323.pdf](http://www.abralliance.org/wp-content/uploads/2017/03/Dominion_charged_with_ignoring_USFS_data_requests-Recorder_20170323.pdf)

Professor cites a lack of transparency on Dominion's part, and evasiveness in addressing concerns over slope stability for the project

#### **Pipeline route near bat habitat**

- The Recorder – 3/23/17

[http://www.abralliance.org/wp-content/uploads/2017/03/Pipeline\\_route\\_near\\_bat\\_habitat-Recorder\\_20170323.pdf](http://www.abralliance.org/wp-content/uploads/2017/03/Pipeline_route_near_bat_habitat-Recorder_20170323.pdf)

Bat species are already under multiple threats,...local populations face yet another if ACP is built

#### **Senator addresses feds about pipeline project**

- The Recorder – 3/23/17

[http://www.abralliance.org/wp-content/uploads/2017/03/Senator\\_addresses\\_feds\\_about\\_pipeline\\_project-Recorder\\_20170323.pdf](http://www.abralliance.org/wp-content/uploads/2017/03/Senator_addresses_feds_about_pipeline_project-Recorder_20170323.pdf)

Touches on concerns over drinking water supplies and negative economic impacts

#### **Groups demand state regulate Dominion**

- The Recorder – 3/23/17

[http://www.abralliance.org/wp-content/uploads/2017/03/Groups\\_demand\\_state\\_regulate\\_Dominion-Recorder\\_20170323.pdf](http://www.abralliance.org/wp-content/uploads/2017/03/Groups_demand_state_regulate_Dominion-Recorder_20170323.pdf)

State's primary role in regulating pipeline projects relates to water...it's important...claims that the state has no authority over the process "holds no water"

### **Pipeline surveying nearly finished in Nelson**

- The Daily Progress – 3/22/17

[http://www.dailyprogress.com/news/local/pipeline-surveying-nearly-finished-in-nelson/article\\_7d5a3d3c-of3e-11e7-856e-83d38fd9a136.html](http://www.dailyprogress.com/news/local/pipeline-surveying-nearly-finished-in-nelson/article_7d5a3d3c-of3e-11e7-856e-83d38fd9a136.html)

Dominion says surveys should be wrapped up in the next few weeks

### **Activists make 200-mile walk along route of proposed natural gas pipeline in North Carolina**

- Free Speech Radio News – 3/17/17

<https://fsrn.org/2017/03/activists-make-200-mile-walk-along-route-of-proposed-natural-gas-pipeline-in-north-carolina/>

## **Regional/Mountain Valley Pipeline, other**

### **Cuccinelli and Petersen column: Dominion's 'deal' not good for its captive customers**

- Richmond Times-Dispatch – 3/20/17

[http://www.richmond.com/opinion/their-opinion/guest-columnists/cuccinelli-and-petersen-column-dominion-s-deal-not-good-for/article\\_f725a17a-8e21-522c-a8cd-ead424932d22.html](http://www.richmond.com/opinion/their-opinion/guest-columnists/cuccinelli-and-petersen-column-dominion-s-deal-not-good-for/article_f725a17a-8e21-522c-a8cd-ead424932d22.html)

### **Gov. Wolf sees hope for Pa. 'manufacturing renaissance' in Marcellus Shale liquids**

- Penn Live – 3/22/17

[http://www.pennlive.com/news/2017/03/gov\\_wolf\\_sees\\_hope\\_for\\_pa\\_manu.html](http://www.pennlive.com/news/2017/03/gov_wolf_sees_hope_for_pa_manu.html)

## **Big Picture:**

### **Trump budget axes funding for Chesapeake Bay cleanup**

- Richmond Times-Dispatch – 3/16/2017

[http://www.richmond.com/news/local/trump-budget-axes-funding-for-chesapeake-bay-cleanup/article\\_b9dbf596-6156-5825-a05f-810aab87add5.html](http://www.richmond.com/news/local/trump-budget-axes-funding-for-chesapeake-bay-cleanup/article_b9dbf596-6156-5825-a05f-810aab87add5.html)

The money slashed from the bay cleanup is part of \$427 million cut from “geographic programs,” such as the Great Lakes Restoration Initiative, from the Environmental Protection Agency’s budget, which is overall facing a reduction of 31 percent

### **The White House calls climate change research a ‘waste.’ Actually, it’s required by law**

- The Washington Post – 3/21/17

[https://www.washingtonpost.com/news/energy-environment/wp/2017/03/21/trumps-budget-slashes-climate-research-but-these-scientists-still-have-a-job-to-do/?utm\\_term=.ed587c2cfa4e](https://www.washingtonpost.com/news/energy-environment/wp/2017/03/21/trumps-budget-slashes-climate-research-but-these-scientists-still-have-a-job-to-do/?utm_term=.ed587c2cfa4e)

“For each of these programs, real people live on the other side of the budget line item”

### **Record-breaking climate change pushes world into ‘uncharted territory’**

- The Guardian – 3/20/17

<https://www.theguardian.com/environment/2017/mar/21/record-breaking-climate-change-world-uncharted-territory>

2016 wasn’t a “weird” year...it’s going to seem pretty standard, even tame, looking forward

### **Atlantic Sunrise Expansion Intervenor Files Motion for Rehearing on FERC Certification of Controversial Pipeline Through The Nesbitt Parcel**

- Business Wire – 3/21/17

<http://www.businesswire.com/news/home/20170321006291/en/Atlantic-Sunrise-Expansion-Intervenor-Files-Motion-Rehearing>

Apparently, legally, FERC cannot authorize construction without a quorum, even though it has approved the application for construction...stay tuned to see how this plays out!

## **Gorsuch Could Tilt Supreme Court on Energy, Environmental Issues**

- Electric Light & Power – 3/22/17

<http://www.elp.com/Electric-Light-Power-Newsletter/articles/2017/03/gorsuch-could-tilt-supreme-court-on-energy-environmental-issues.html>

SCOTUS nominee a bit of an unknown quantity when dealing with energy and environment

## **Dominion Power violated Clean Water Act after arsenic seeped into Elizabeth River, judge says**

- The Virginian Pilot – 3/23/17

[http://pilotonline.com/news/local/environment/dominion-power-violated-clean-water-act-after-arsenic-seeped-into/article\\_1f3e5082-78bf-53fa-8dd3-05e7bd6ad529.html](http://pilotonline.com/news/local/environment/dominion-power-violated-clean-water-act-after-arsenic-seeped-into/article_1f3e5082-78bf-53fa-8dd3-05e7bd6ad529.html)

Coal ash still will remain in place, unless McAuliffe's amendments to coal ash cleanup bill inspire a change of strategy (or regulation)

Related:

- <https://www.usnews.com/news/best-states/virginia/articles/2017-03-22/mcauliffe-amends-coal-ash-bill-to-halt-pond-closure-permits>

## **Forget EPA Climate Regulations. Cheap Wind Is Already Putting 56 Gigawatts of Coal Plants at Risk**

- Greentech Media – 3/21/17

<https://www.greentechmedia.com/articles/read/wind-is-killing-coal-in-America>

Renewable energy is getting so cheap that it is threatening to force gigawatts of coal plants into early retirement -- even without Obama-era climate regulations

## **Commentary: 'Monumental Job Growth' in U.S. Clean Energy Sector**

- IEEFA – 3/16/17

<http://ieefa.org/commentary-monumental-job-growth-u-s-clean-energy-sector/>

Renewable energy technologies have just gotten their legs under them and that sector is creating jobs faster than any other industry. Now would be the *worst* time to pull the rug out...for the industry, and the economy as a whole

**But wait...there's more! See below...**

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