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Groups demand state regulate Dominion

By John Bruce • Staff Writer

MONTEREY — The pressure is on to make the state do its job.

A citizens group recently disagreed with Sen. Creigh Deeds about the state's role in regulating Dominion and the proposed Atlantic Coast Pipeline, and at least one other local group isn't letting state environmental regulators off the hook, either.

The group contends Deeds' report on a meeting with the Department of Environmental Quality director wrongly described the state as having less influence on pipeline regulation compared to the Federal Energy Regulatory Commission.

"The primary permit for this project, if it goes forward, will come from the Federal Energy Regulatory Commission," Deeds stated in his newsletter. "While this federal process largely bypasses state authority, some state agencies will play a role. Recently I met with David Paylor, director of the Department of Environmental Quality, and I can assure you that he is taking his agency's role in the review of this project seriously. Primarily, DEQ's role will be related to water protection. DEQ is responsible for evaluating and issuing permits, either individual or combined, for any proposed stream crossings. The agency will also be required to monitor soil erosion to limit the impact on water quality during the construction of the pipeline, if the permit is issued, and consider any impact on wetlands. There is a time for everything, and DEQ has limited authority until FERC renders a decision.

"As most folks know, FERC issued an Environmental Impact Statement at the end of the year. DEQ split the report up among about 30 employees who are tasked with assessing different parts of the report. The review will be governed by science and the law. I have requested DEQ to keep me updated," Deeds wrote.

To the contrary, the group argued, the state has a pivotal role, and is obligated to seek public input and use public recommendations to ensure Dominion lawfully conforms to water quality safeguards.

Wednesday, Deeds told The Recorder he had spoken to DEQ. “I just spoke with David Paylor and expressed in the clearest terms possible that I want a process that is open and transparent, and that gives the public the opportunity for input. He assured me that the process would be as transparent as possible, and that there would be opportunities for public input.”

Deeds wrote to FERC earlier, on March 13, citing constituent concerns about drinking water supplies and plummeting property values (see sidebar). DEQ assigned 30 employees to systematically review FERC’s draft environmental impact statement but had not issued a response as of press time.

Those who wrote to Deeds consisted of people from Bath, Highland and other counties on the western Virginia portion of the pipeline study corridor. They included Richard Averitt, Misty Boos, Richard Brooks, Lew Freeman, David Harbor, Bill Limpert, Ernie Reed, David Sligh, Rick Webb and Bill Wilson. Several of them represent larger groups of pipeline opponents.

In its March 16 letter, the group asked Deeds to “publicly insist upon a fair and open regulatory process, to ensure the State of Virginia meets its legal duties in relation to the ACP. Such a process requires individual consideration of the ACP’s ability to meet Clean Water Act standards and precludes a rubber-stamp approval that state officials have suggested they might issue,” they said.

“We thank you for your efforts on behalf of your constituents and your attention to this matter,” they continued. “An additional step by you, of publicly raising your voice in support of citizens’ demands for a rigorous and transparent Clean Water Act review, would have great value. In a report to the public, printed in area newspapers in February, you described a meeting with Director David Paylor of the Virginia Department of Environmental Quality.

“There are several items we’d like to address from that report,” they told Deeds. “As you noted, Virginia’s primary responsibility for the pipeline is for water quality protections. However, the contention that ‘DEQ has limited authority until FERC renders a decision’ is simply not accurate. It is important to emphasize that Virginia’s role in this regard is not subordinate to the federal government’s role.

“State approval is a prior condition to a federal permit. Congress reserved states’ powers to protect their waters against impairment from federally-licensed projects. Under the law, Virginia can and must veto the ACP unless the state can ensure that all state water quality rules will be met,” they said.

“To provide the necessary assurance that our waters will be protected, the state must do two things. First, it must conduct a public notice and comment process that allows Virginians to inform the DEQ about issues and facts local residents know best and to defend their rights in a formal legal proceeding. Second, the DEQ must take the many requests for information and suggestions for protective measures it and other agencies have developed and turn them into enforceable requirements that govern Dominion’s behavior.

“We note that the DEQ issued comments on the Mountain Valley Pipeline Draft Environmental Impact Statement in December. Those comments contained dozens of areas in which the pipeline company failed or refused to provide necessary information. They also showed that analyses and conclusions by FERC were unsound. Many of the same deficiencies exist in the draft EIS for the ACP. If the DEQ merely recommends or suggests that FERC get the right information and impose the right protections, then Virginia will have abdicated its responsibilities. Such a passive approach is not worthy of our public servants,” they explained.

“Your report mentions that Virginia may issue either ‘individual or combined’ permits. Such ‘combined’ permits are legally and technically inadequate to protect against the threats posed by huge projects like the ACP,” they continued. “They were designed for small, low-impact projects and exclude the people from reviews of the specific plans for individual projects. Citizens have, for many months, sought assurances from Director Paylor, Secretary of Natural Resources Molly Ward, and Governor McAuliffe that the state won’t shortcut the regulatory process. So far, we’ve been stonewalled. Virginians deserve to know how the DEQ will proceed with regulation of the ACP. We hope that your voice, added to a chorus of citizens and public figures asking for a full, open, and fair regulatory action, will help us get the required answers and the protections we’ve been promised under law.”

Meanwhile, the Cowpasture River River Preservation Association has called for the state to deny waivers Dominion would request to relieve the company of obeying the state’s 500 feet of open-foot trench rule during construction.

And, while they have not taken an official position on the pipeline, Highland County supervisors will hear a presentation and ask Dominion about its proposed route through during a work session 6 p.m. Wednesday, March 29 in the modular conference room. Board policy prohibits public comment during open work sessions.

Comments to FERC may be filed electronically, using the e-Comment feature at www.ferc.gov, under the link to documents and filing, or by paper copy mailing to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, D.C. 20426. The FERC comment deadline is April 6.

Contact information for state elected officials:

- In Bath, Del. Ben Cline, P.O. Box 1405, Amherst, Va. 24521, www.bencline.com.
- In Highland, Del. Richard “Dickie” Bell, P.O. Box 239, Staunton, Va. 24402, www.bellfordelegate.com.
- In both counties, Sen. Creigh Deeds, P.O. Box 5462, Charlottesville, Va. 22905- 5462, www.senatordeeds.com.

The draft EIS may be accessed at www.abralliance.org and clicking on Draft Environmental Impact Statement for the Atlantic Coast Pipeline.