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Wall Street intent on planned pipeline

BY JOHN BRUCE • STAFF WRITER

MONTEREY — The nation’s financial services community is maintaining a keen interest in the proposed Atlantic Coast Pipeline and its regulatory challenges, as shown in communications released under The Recorder’s latest Freedom of Information Act request to the Virginia Outdoors Foundation.

Leading industry nameplates Goldman Sachs and Morgan Stanley have stayed attuned to the regulatory hurdle, and were in touch with VOF days before the board voted Feb. 9 to table a decision on Dominion’s proposal to convert easements.

Stephen Byrd, research director at Morgan Stanley, inquired about the VOF staff reports on the easements.

“If I were you, I would read the ‘responses’ to the statutory requirements under 1704 and ‘conclusions’ in the staff reports and the conclusions in the substitute land reports,” VOF deputy director Martha Little advised him. “You may also want to look at some of the exhibits such as the local government statements.”

Michael Lapidés, Byrd’s counterpart at Goldman Sachs, asked about the reports on two of the easements.

“The Berry and Saunders reports – as I’m reading the conclusions – make it seem like the VOF staff agrees (with) allowing access to the easement in exchange for the proposed properties submitted by the project developers?” Lapidés asked Little before the Feb. 9 meeting, referring to two of the 10 easements in Bath and Highland.

VOF explained in a subsequent response to The Recorder that the VOF staff conclusion on the reports, as follows, is wholly conditional on the board’s determination about whether the applications satisfy the open-space land conversion statute that provides for land swapping:

“If the board of trustees finds that (Dominion) applications meet the requirements of Section 10.1 - 1704, staff would recommend the following conditions:

- Issuance of a Certificate of Public Convenience and Necessity by FERC and all other necessary state and federal permits for the proposed ACP route crossing this easement;
- VOF approval and sign-off of final right of way easement permitting only a permanent 50-foot easement for one 42-inch diameter underground natural gas pipeline and the associated permanent access road easement. No above-ground structures are permitted within this permanent right of way with the exception of above ground pipeline markers as required by law;
- ACP transfer of fee-simple interest to VOF of the proposed 1,034-acre Hayfields Farm property as substitute land for the converted areas of the open-space easement property;
- The acceptance of funds from ACP to: serve as a Stewardship Fund to support VOF with the operation and management of the substitute properties; and partially offset VOF's unreimbursed costs associated with the ACP; and
- Written requests from both VOF and ACP to FERC to include the above stated requirements as conditions of the FERC approval. Additional site specific conditions may be developed with ACP representatives and the current landowner of the easement property, such as minimizing the extent of the permanent easement and construction footprint where feasible, developing pollinator corridors and restoring other natural habitat areas in order to help preserve the purpose of the open-space deed of easement.”

VOF spokesman Jason McGarvey explained, “It’s a conditional recommendation as constructed in the first sentence — if X, then staff would recommend Y. First, the board has to determine that the applications meet the requirements of 1704; VOF staff are not making a recommendation. They are just presenting facts for the board to consider.”

Significantly, the Bath government statement included in the exhibits consists of a letter to FERC expressing the supervisors’ opposition to the project’s licensing.

The exhibits to VOF accompanying the applications respond in varying parlance as to how Dominion would meet the “essentiality” statutory requirement, departing from the comments from Dominion’s law firm, which contends the project is essential to the locality’s orderly growth due to property tax payments and other alleged benefits.

Instead, Dominion “anticipates that FERC will issue a (certificate of convenience and necessity) for ACP in the third quarter of 2017. The issuance ... will demonstrate the need for the ACP and confirm that the route selected is the best alternative for meeting that need. Project development is contingent upon receipt of the FERC certificate, which will be provided to VOF upon receipt,” the exhibit says.

Dominion “submits that the proposed route, which crosses through the ... easement, is the only viable and safely constructible route for the ACP facilities in this area. The route passes through more favorable topography, minimizing environmental impacts and disturbance associated with side slope construction. Unlike other options considered, the proposed route avoids impacts to the George Washington National Forest and other VOF easements. It also avoids the need to add

significant mileage to the project, which would lead to more land disturbance and impacts to environmental resources. The proposed route traverses a landscape less prone to environmental concerns associated with side slope construction, and avoids the crossing of significant karst features, artesian wells, and underground springs that provide a local source of water for the landowners in the area.”

In a separate communication Little received, Donald Trump’s list of infrastructure projects put the proposed ACP as ranking 20th on his priorities before his inauguration. A more current list places ACP at 48th.

VOF has repeatedly expressed opposition the proposed easement crossings to FERC, as shown in many letters to the agency.

“It is VOF’s position that the proposed ‘conversions’ under this code section are not minor and, in fact, would represent the largest conversion of open space land in VOF’s 50-year history,” Little wrote in the VOF’s latest letter to FERC, dated December 2016.

“It is important to note that (Dominion) is correct in stating that VOF will retain control over the easement lands such that it can preclude additional development or utility infrastructure in the future. VOF would like to respond to two additional points made by (Dominion) in their response of Oct. 26, 2016. The first statement is: ‘(Dominion) believes that it will have met all relevant state statutory criteria for VOF approval of the crossings if they are deemed to be conversions and will be prepared to present this to the VOF Board in February 2017.’

The second point pertains to (Dominion)’s discussion of the language found in eight of the 10 easements explicitly permitting the construction in whole or in part of private and public utilities to serve other properties which may be constructed with the approval of VOF, so long as the construction and maintenance of the utilities to do not impair the conservation values of the affected property ... What is not clearly stated here is that construction of the (Dominion) Coast Pipeline would not fall within the scope of activities permitted by this language in the easements.

“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 ... It is not a question at this time of whether the crossing(s) will be deemed to be a conversion but rather whether (Dominion) will have met the statutory requirements of (the Code),” Little told FERC.