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VOF may review Hayfields plan in September

BY ANNE ADAMS • STAFF WRITER

MONTEREY — For landowners, the wait has been hard.

Area property owners who have conservation easements on their land held by the Virginia Outdoors Foundation have been anxious about when the foundation will take up a vote on a request from Dominion Energy.

Dominion applied to VOF to convert 10 easements held by the foundation that lie in the path of its proposed Atlantic Coast Pipeline. The bulk of them are in northern Bath County. One is in Highland. Others are in Augusta and Nelson counties.

The foundation has explained to the Federal Energy Regulatory Commission the project cannot cross those easements unless they are converted — a legal state process that requires the company to offer another, similar property upon which an easement can be attached.

According to the law, no open-space land acquired and designated as open-space land can be converted or diverted from that use unless VOF determines that is “essential to the orderly development and growth of the locality, and in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion; and there is substituted other real property which is of at least equal fair market value, of greater value as permanent open-space land than the land converted or diverted and of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted.”

Dominion proposes to use Hayfields farm south of McDowell as the substitute property.

To meet the “essentiality” requirement, Dominion claims it has demonstrated the conversion would be essential to the orderly development and growth of the locality and must submit a letter or statement and/or materials from the local government, regional, state, or federal entity to this effect.

Should the VOF board approve the applications, the land under easement would pose no obstacle for the pipeline project to proceed. The easements would stay in place, and Dominion would be able to cross them with the pipeline without exercising eminent domain. If they are not approved, Dominion would not be able to build there.

Dominion first applied more than a year ago, then requested a delay. The company finally presented the applications to the VOF board in February. The board has yet to make a decision, and that has landowners worried. What's taking so long?

VOF communications director Jason McGarvey explains it's about the process and the timing. There's no intentional delay, he said. The board might schedule a vote at its September meeting.

"It's tossed into limbo right now," he said. "We are not calling it a delay, and Dominion did not request that we wait until the final Environmental Impact Statement or (FERC) certificate is approved."

There are several factors involved, he stressed. For one thing, VOF's board wants to give its staff plenty of time to do research on the issues involved. Environmental groups are pushing VOF to wait until FERC issues a final certificate. "They're saying to vote now would be putting the cart before the horse, to conditionally approve this before FERC does, and our board is taking that into consideration," he said. "But it's more about the timing and the process, and the FERC process was delayed."

As an example of how things can change, McGarvey pointed out the VOF board had scheduled a special meeting in July to consider a similar application related to the Mountain Valley Pipeline. The board felt it should decide soon because that project would have a final EIS approved. But when the final EIS was issued, FERC had recommended avoiding the conservation easement after all. "So maybe there won't be a board meeting in July on that because the MVP application could just go away," he said.

For Dominion's ACP conversion applications, the foundation might move the application process through before FERC issues a certificate. "We'd want to have our decision reflected in FERC's final decision," he said. "And much can change along the way ... that's one of the reasons behind the timing. We want to do this in a methodical way, but also, not put ourselves in a position of weakness. The ACP has a lot of folks speculating, and the bottom line is, that's all it is — speculation. This is the nature of the process, a legal process, and we're working with the attorney general's office for guidance."

McGarvey declined to comment on the legal advice from the state AG's office, due to the ongoing negotiation.

"The board and staff want as much time for due diligence as possible," McGarvey said. "Our board takes this seriously ... everything we do is driven by getting the best possible outcome for the public. We want to maximize what we might get, but the FERC process is not in our control. So, we want whatever outcome is best."

He said the foundation has tried to make sure citizens, especially those whose land is affected, understand the process. "We've tried to spell it out to everyone," he said. "It's hard to wrap your head around it — it's all process driven, and it's complicated. We've been in close contact with landowners; some are happy, some not. But we feel comfortable with the position we're in — we're in a position to get a good outcome for the public."

McGarvey also stressed the VOF is not "handing off" its authority. "We are using every power we have for the commonwealth. Our power is limited, but we're still trying to influence where

we can. We prefer FERC would not route through these easements ... but if they decide to put this on the easements, we want to maximize this for public benefit.”

Among several other landowners, Robert and Roberta Koontz, owners of The Wilderness farm in Bath County, have two VOF conservation easements across their property the pipeline is routed to cross.

Recently, the Department of Historic Resources added the property to Virginia’s register of historic places. That does not affect VOF legal authority with regard to those two easements, McGarvey said. “We remain committed to protecting those easements,” he added, noting the language in the easement documents took the historic nature of the property into consideration when they were written.

If anything, he said, the foundation’s conservation easements are more restrictive than historic landmark designation.

“Many folks don’t understand that conversions are part of this, and always have been possible. But ACP is getting no special treatment. If there is any special treatment, it’s that the board is being extra diligent due to the size and impact of this project. We are holding (Dominion) to a very high standard,” McGarvey said.

Where most conversion applications are in large part handled administratively, Dominion’s are going through the VOF board, with as much transparency as possible, McGarvey said.

VOF wants to enforce the easement language, but to the degree the pipeline project qualifies for conversion — which is not common, McGarvey stressed — VOF will consider whether Dominion can demonstrate the need.

“We make our own decision on need,” he said, “but the federal process comes with conditions, and it pre-dates the Open Space Land Act we work under. That piece of state law came after the federal law, and we need to see how those play out together. Our board is trying to understand this.”

The VOF has been clear with FERC and Dominion that everything possible should be done to avoid VOF’s easements.

VOF has said putting a 42-inch industrial pipeline through those easements would be “inconsistent with their conservation values to be protected in perpetuity.”

The earliest the VOF board might take up the matter is this September, unless the board calls a special meeting sooner. McGarvey said VOF is doing everything it can to notify landowners, media, and the public in general in advance of any board actions.

The board’s schedule and meeting agendas can be found at:
www.virginiaoutdoorsfoundation.org.