



ABRA Update #138 – July 14, 2017

VA Supreme Court Hands Down Two Decisions on State Surveying Law

The Virginia Supreme Court ruled on July 13 in two cases that challenged the right of the Atlantic Coast Pipeline, LLC (ACP, LLC) to survey their property under the provisions of [Section 56-49.01](#). That statute provides that:

Any firm, corporation, company, or partnership, organized for the bona fide purpose of operating as a natural gas company as defined in 15 U.S.C. § 717a, as amended, may make such examinations, tests, hand auger borings, appraisals, and surveys for its proposed line or location of its works as are necessary (i) to satisfy any regulatory requirements and (ii) for the selection of the most advantageous location or route, . . . [and] may enter upon any property without the written permission of its owner if (a) the natural gas company has requested the owner's permission to inspect the property as provided in subsection B, (b) the owner's written permission is not received prior to the date entry is proposed, and (c) the natural gas company has given the owner notice of intent to enter . . .

In a case brought by a group of Buckingham County landowners, [Chaffins, et. al. vs. Atlantic Coast Pipeline, LLC](#), the court ruled that pipeline surveyors had not provided adequate notice before entering the plaintiffs' property. The decision favored the landowners, ruling that the ACP had not given appropriate notice under the requirements of the statute.

The [second case](#), brought by Augusta County landowner Hazel Palmer, challenged the right of an out-of-state corporation (ACP, LLC is chartered in Delaware) to enter property for surveys or to seize property under eminent domain. The court ruled that state law permits the survey work, but said the plaintiffs had waited too late in the legal process to raise the issue of eminent domain, or property seizure. For more, see the Washington Post story below.

The Next 98 Days

If the Atlantic Coast Pipeline (ACP) decision-making process were a horse race, we might be about to enter the home stretch. Between now and mid-October, several documents are to be released and actions are expected to be taken that will have a major impact on the future of the ACP. Below is an overview of what's coming up. An asterisk (*) indicates further details for that item are available in [ABRA Update 137, July 6](#).

- July 18 & 20* – Section 401 hearings by the North Carolina Department of Environmental Quality.
- July 21 – Scheduled release by the Federal Energy Regulatory Commission of the Final Environmental Impact Statement for the ACP.

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- July 20-31 – Estimated time frame when the U.S. Forest Service is expected to release its decision draft on whether to amend the Forest Plans for the Monongahela and George Washington National Forests regarding whether accommodate the ACP route.
- July 31 and August 1* - Section 401 hearings by the West Virginia Department of Environmental Protection.
- August 4* – End of Section 401 written comment period in West Virginia.
- August 7, 10 & 14* - Section 401 hearings by the Virginia Department of Environmental Quality.
- August 22 – End of Section 401 written comment period in Virginia.
- October 19 – Scheduled deadline for a decision by FERC on the ACP permit application.

Keep your seat belts fastened!

Comments at July 19 VA Water Board Hearing to Be Limited

The July 19 regular meeting of the Virginia Water Control Board will include a public forum comment period, as is usual for such meetings, but it will not be permitted for people to address the Board on the substance of the proposed draft decision documents for certifying the Atlantic Coast (ACP) and Mountain Valley Pipelines (MVP). Water Control Board procedures “provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions.” The water quality certification proposals, being considered pursuant to Section 401 of the federal Clean Water Act, are considered “pending regulatory actions.”

ABRA conferred with the Virginia Department of Environmental Quality, which provides staff for the Board. It was pointed out that those wishing to provide comments on the certification proposals can do so during the comment period that ends August 22, either through written comments or at one of the 5 public hearings (3 for the ACP, 2 for the MVP), as detailed in [last week’s ABRA Update](#).

DEQ staff did say that while interested citizens would not be permitted to discuss the water quality certification proposals for the two pipelines at the meeting on the 19th, there would be no prohibition on comments made about the process in general, such as the decision of the DEQ to consider the ACP’s yet-to-be filed Erosion and Sediment Control Plan separate from the consideration of the 401 applications, or the fact that an inadequate number of public hearings at locations proximate to the pipeline route have been scheduled. The July 19 meeting will begin at 9:30 am, but the public forum portion is not expected to be taken up until toward 1 pm., according to DEQ staff. Staff also said that persons who show up later in the morning will still be permitted to sign up to speak. More details on the Water Control Board’s meeting, including an agenda, are available [here](#). Persons commenting are asked to limit their presentations to 3 minutes or less.

In the News:

Local/Atlantic Coast Pipeline

Supreme Court of Virginia hands pipeline foes small victory, but project rolls on

- The Washington Post – 7/13/17

https://www.washingtonpost.com/local/virginia-politics/state-supreme-court-hands-pipeline-opponents-small-victory-project-rolls-on/2017/07/13/39cc37b0-67df-11e7-8eb5-cbccc2e7bfbf_story.html?utm_term=.c8f28603a036

Dominion Energy spokesman Aaron Ruby applauded the court's rulings Thursday, saying they had "upheld the constitutionality of Virginia's survey law and reaffirmed our right to perform these surveys."

Related:

http://www.roanoke.com/townnews/law/virginia-supreme-court-ruling-upholds-pipeline-surveying-law-challenges-still/article_305a7461-38aa-5234-b168-c240232b774d.html

Agencies slow to furnish vital pipeline plans

- The Recorder – 7/13/17

https://www.abralliance.org/wp-content/uploads/2017/07/Agencies_slow_to_furnish_vital_pipeline_plans-Reorder_20170713.pdf

The Recorder questioned agencies last week about the transparency of water quality regulation, access to Dominion's surveys of Little Valley, and the law-enforcement "teeth" of U.S. Forest plans with respect to the proposed ACP.

Dominion no friend to landowners in region

- The Recorder – 7/13/17

https://www.abralliance.org/wp-content/uploads/2017/07/Dominion_no_friend_to_landowners_in_region-Recorder_20170713.pdf

FERC should hold trial-like hearing on pipeline

- The Recorder – 7/13/17

https://www.abralliance.org/wp-content/uploads/2017/07/FERC_should_hold_trial-like_hearing_on_pipeline-Recorder_20170713.pdf

Dominion CEO charts the company's low-carbon future

- E&E News – 7/10/17

https://www.abralliance.org/wp-content/uploads/2017/07/Dominion_CEO_charts_the_companys_low-carbon_future_20170710.pdf

Farrell talks up gas and solar...sometime soon. No mention of the \$20 billion North Anna 3. Disses wind...failing to note that Virginia's **offshore** resource is top-tier (raising questions about Dominion's recent **announcement** about the pilot wind turbines off VA Beach).

Regional/Mountain Valley Pipeline, other

A pipeline that would cut through the iconic Appalachian Trail sparks a fight over natural gas expansion

- Los Angeles Times – 7/14/17

<http://www.latimes.com/politics/la-na-pol-pipeline-appalachian-trail-201707-htmstory.html>

The same glut of natural gas that helped the U.S. substantially cut its greenhouse gas emissions is now also threatening efforts to fight climate change.

Pipeline survey crew surprises Bent Mountain landowners with early morning entry

- The Roanoke Times – 7/11/17

http://www.roanoke.com/news/local/roanoke_county/pipeline-survey-crew-surprises-bent-mountain-landowners-with-early-morning/article_e23940f7-9eb8-57ea-b2f2-8fc89505b51d.html

Crack-of-Dawn stealth infiltrations now part of MVP surveyors' bag of tricks to evade resistant land owners. What's next, night-vision goggles?!

Call for additional DEQ public hearings on pipeline falls flat

- The Roanoke Times – 6/12/17

http://www.roanoke.com/news/local/roanoke_county/call-for-additional-deq-public-hearings-on-pipeline-falls-flat/article_ba448485-a022-5e7d-89f4-665d509cd0c5.html

Del. Greg Habeeb, R-Salem, fired off an email to DEQ officials, noting it was “totally unacceptable that you all are not holding a single hearing in our affected area.” On Monday, he said DEQ’s plan for two hearings suggests the agency is “trying to avoid robust public dialogue.”

As Virginia explores options for carbon trading, joining RGGI a possibility

- Southeast Energy News – 7/11/17

<https://southeastenergynews.com/2017/07/11/as-virginia-explores-options-for-carbon-trading-joining-rggi-a-possibility/>

How do enormous natural gas pipelines fit into a regional greenhouse gas trading scheme when further emissions cuts due to fuel switching will be minimal?

Big Picture:

Gov. Jerry Brown says the existence of humanity rests on his climate change deal

- Los Angeles Times – 7/14/17

<http://www.latimes.com/politics/la-pol-ca-governor-pushes-climate-change-deal-20170713-story.html>

To be fair, he said “*organized human existence*”, meaning a *reasonably-developed civilization*.

A Week After Leaving FERC, Former Commissioner Honorable Joins Firm Lobbying for Company Behind Atlantic Coast Pipeline

- DeSmog – 7/12/17

<https://www.desmogblog.com/2017/07/12/week-after-leaving-ferc-former-commissioner-honorable-joins-firm-lobbying-company-behind-atlantic-coast-pipeline>

Honorable’s immediate transition to a private sector firm connected to the industry she had regulated follows in the steps of many other ex-FERC commissioners and employees. A 2015 report by E&E found that FERC employees [negotiate](#) their prospective industry jobs while still at FERC.

DC Circuit Hands Pipelines Roadmaps to Construct Projects over Delays by Local Permitting Agencies

- The National Law Review – 7/6/17

<https://www.natlawreview.com/article/dc-circuit-hands-pipelines-roadmaps-to-construct-projects-over-delays-local>

FERC to Rover: Spill Clean-Up Required Before In-Service Authorization

- Natural Gas Intelligence – 7/12/17

<http://www.naturalgasintel.com/articles/111069-ferc-to-rover-spill-clean-up-required-before-in-service-authorization>

NatGas Industry Takes Battle for Northern Access to Court

- Natural Gas Intelligence – 7/12/17

<http://www.naturalgasintel.com/articles/111065-natgas-industry-takes-battle-for-northern-access-to-court>

A Russian Pipeline of Deception: Nord Stream 2

- Forbes – 7/11/17

<https://www.forbes.com/sites/forbesinternational/2017/07/11/a-russian-pipeline-of-deception-nord-stream-2/#a0fe7e27b220>

Pay attention to the final paragraph on page 1. Note the parallels between Russian interests in Europe and Dominion’s interests along the East Coast. Though incentives are different, overbuild and stranded assets will result for both. And, somebody has to pay for that, with hard-earned money and/or security.

The Energy 202: Pentagon climate work in the GOP crosshairs

- The Washington Post – 7/13/17

https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2017/07/13/the-energy-202-should-the-defense-department-take-seriously-the-threat-of-climate-change/59664cafe9b69b7071abcb17/?utm_term=.11032eb812a2

GOP legislators aim to stop DOD research on adaptation and resilience claiming that climate change is not an “immediate and direct threat” to our security. See Vox story below...

Why aren't politicians doing more on climate change? Maybe because they're so old.

- Vox – 7/14/17

<https://www.vox.com/first-person/2017/7/14/15959968/climate-change-teenager>

The problems of a future you will never see dim, over time, compared to those that you can address and measure changes in today...or over the next few election cycles. This is a problem.