

The Recorder

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Pipeline puzzle pieces shamefully missing

Is there any way to stop the pipeline from coming through here?

That's the question we're asked most frequently these days.

Dominion Energy's proposed Atlantic Coast Pipeline seems to be moving through all the required steps toward federal approval quite nicely, despite myriad unknowns that give us heartburn.

A final Environmental Impact Statement is expected to surface this week from the Federal Energy Regulatory Commission, which can then issue its approval for the ACP within 90 days.

FERC is expected to issue a certificate to Dominion by Oct. 19.

Dominion's contractors are already building pipe. Donald Trump has appointed new FERC commissioners who are expected to be approved by Congress soon, giving the agency the quorum it needs to take action.

Virginia's Department of Environmental Quality has already scheduled hearings on erosion and sediment control plans next month, even though water issues haven't been thoroughly addressed or information made public for review.

What, then, are route opponents to do?

Remind the powers that be: Key pieces of the puzzle remain missing.

It does not appear any agency, with the exception of the U.S. Forest Service, is adequately prepared to fulfill its duties in reviewing Dominion's plans, and even the USFS's position is now questionable. It let down a whole host of citizens when it agreed to change its forest plan to accommodate the proposed Mountain Valley Pipeline.

It's easy to expect FERC will approve the ACP, since it approves almost all pipeline applications, but there are issues here unique to this project we hope FERC will take up, and force Dominion to address.

- Valley Center and Little Valley — These Bath and Highland neighborhoods have repeatedly pointed out the environmental hazards of building the pipeline through their karst terrain and flattening mountaintops, and they have repeatedly noted there is no sufficient plan to get residents out of there in an emergency. The topography is simply unsuitable for construction, and the plans offered by Dominion are woefully lacking. Even FERC told Dominion to find another route, and so far the company has refused.

- Conservation easements — We have yet to hear from the Virginia Outdoors Foundation on whether it will allow the project to cross its easement holdings. VOF is waiting to see the final EIS, but it has strongly opposed allowing Dominion to disrupt those 11 easements, voluntarily provided by private landowners. It faces legal challenges if it were to approve applications to swap them out for Hayfields Farm, 10 miles north.

- Water, erosion — Despite years of documentation proving the risk to water quality from the project, Dominion, DEQ, and FERC have failed to show the pipeline can avoid polluting our waters, wells, and springs. A lawsuit has already been filed against the DEQ, and the state, of course, has already filed a motion to dismiss it. A hearing date has been set for Aug. 17. According to the Dominion Pipeline Monitoring Coalition, which filed the suit, the state asserts the broader 401 certification is not a regulation and therefore not open to challenge under the Administrative Process Act. They also claim that, even if DMPC's challenge can go forward as a challenge to a regulation, two of its claims that assert violations of the APA's procedural rules for adopting regulations were not properly preserved when DPMC made comments in the public comment period. Much remains to be seen.

We should point out, as DPMC does, the real issue is that DEQ declares its plan reviews for the ACP will be separate from review of 401 certification. The 401 decision will be based on narrowly defined issues like direct discharge to streams and water crossings under the Army Corps of Engineers. Once the 401 certification is approved, the state's authority over the ACP will be limited to the conditions it attaches to that, and it's not clear the DEQ will even have the authority to enforce them. It's a regulatory trick — DEQ tells the public it will examine every detail of the project, but in reality, it's only delaying the review of critical information until it's too late. And perhaps, without any public input.

- Threatened and endangered species — Numerous species unique to this region, including an endangered bumblebee, are likely to be displaced, their habitats fragmented. This includes all manner of currently protected flora and fauna. We suspect without better plans to avoid them, legal challenges will erupt on this issue, too.

Lawsuits have already been filed — about eminent domain and surveying, about DEQ's methods, and other matters. Expect to see more in the near future, especially if FERC fails us with a final EIS that does not address the gaping holes in information or construction plans.

We think legal wrangling will delay the project. That seems to be the only way to fight the sheer arrogance of Dominion and FERC, and other government agencies involved. They might be staffed with smart, compassionate people, but collectively, they are governed by processes and requirements that make no sense in practice. There is far too much conflict of interest. Too much

money in the pockets of those with authority. A revolving door relationship exists where FERC and energy sector personnel switch places routinely. It's downright incestuous.

The way these projects are approved isn't just broken, it's set up to manipulate regular people with few resources whose lives and livelihoods are threatened.

We are now in our fourth summer of this manipulation.

But there's plenty left to fight about, and reasons to have hope. Consider:

- SCN reports that major energy companies June 29 suspended their permitting process with FERC for a \$3.2 billion Access Northeast pipeline because it "allegedly needs more time to create a strong political support for a proposed tariff on electric ratepayers" — a move met with big backlash. The future of that project is now unclear.

- Inside Climate News reported in May about eight violations in seven weeks in Ohio, where the same company building the Dakota pipeline is now under fire. "U.S. regulators halted construction at new sites on an Ohio pipeline after several million gallons of drilling mud coated important state wetlands." FERC said, "Staff has serious concerns regarding the magnitude of the incident (which was several orders of magnitude greater than other documented [horizontal directional drilling] inadvertent returns for this project), its environmental impacts, the lack of clarity regarding the underlying reasons for its occurrence, and the possibility of future problems."

- The same media outlet reported in December that "A combination of market forces and strong public opposition has led to a wave of infrastructure projects being shelved altogether or delayed." And, "Sustained grassroots resistance and public opposition have played a role in at least some of these decisions; other influential factors include unfavorable economic conditions such as low oil prices, as well as governments' environmental concerns and project siting issues."

We have reason to believe FERC could — and should — become more cautious on projects of this magnitude, but we are simultaneously forced to pressure state agencies to do their jobs.

Once we see the final EIS, we'll know what the battles will be for the next 90 days, legal and otherwise.

But most important, concerned folks can keep letting FERC and the congressional delegation know their thoughts about all the missing pieces of the proposed pipeline puzzle. It's not too late.

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 contact information for Bath and Highland federal legislators is:

- U.S. Rep. Bob Goodlatte, 2309 Rayburn House Office Building, Washington, D.C. 20515, phone: (202) 225-5431, fax: (202) 225-9681, <http://goodlatte.house.gov>;
- U.S. Sen. Tim Kaine, 231 Russell Senate Office Building, Washington, D.C. 20510, phone: (202) 224-4024, fax: (202) 228-6363, www.kaine.senate.gov; and
- U.S. Sen. Mark Warner, 475 Russell Senate Office Building, Washington, D.C. 20510, phone: (202) 224-2023, www.warner.senate.gov/public.

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.