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Question of need stands in wake of pipeline environmental report

BY JOHN BRUCE • STAFF WRITER

MONTEREY – Last Friday was a dark day for pipeline opponents and a victory lap for supporters.

Will a “woefully inadequate analysis” or “favorable environmental report” decide the fate of the Atlantic Coast Pipeline?

The answer depends on whether you side with pipeline developer Dominion and its forecasts of an electricity sales boom, or opposing citizen groups who predict only modest utility power consumption growth.

Allegheny Blue Ridge Alliance president Lew Freeman criticized the Federal Energy Regulatory Commission’s final environmental impact statement on its release July 21.

The ABRA chief contradicted Leslie Hartz, Dominion Energy’s vice president of engineering and construction, who voiced avid praise of the document. “The favorable environmental report released today provides a clear path for final approval of the Atlantic Coast Pipeline this fall,” Hartz said in a statement refuting critics with claims of negligible impact and urgent need.

Dominion has said most of the gas would go to fuel electric power plants.

“The report concludes that the project can be built safely and with minimal long-term impacts to the environment. The report also reinforces previous findings by the FERC and decades of research demonstrating that natural gas pipelines do not adversely impact tourist economies or residential property values ... The Atlantic Coast Pipeline is essential to the economic vitality, environmental health and energy security of our region. It will result in more economic opportunity, a cleaner environment, and lower energy bills for consumers and businesses. The project is urgently needed by public utilities in Virginia and North Carolina to generate cleaner electricity, heat homes and power local businesses. Public utilities in our region are depending on

this project to meet the growing energy needs of the millions of customers they serve,” Hartz said.

Suggesting an opposite energy-needs trend is the American Council for an Energy Efficient Economy. In March, ACEEE projected through 2040, average electrical demand annual growth ranging from 0.1 to 1 percent, “much slower than historic growth” in the Southeast. Solar power growth was one of the forecast factors.

“It’s critical to note that although FERC appears destined to approve it, without regard for whether it is needed, this pipeline is not a done deal,” ABRA’s Freeman affirmed. “This is the core issue upon which all other considerations of the controversial project are based, (on which) ABRA’s coalition of community groups and legal and technical experts agreed. The Federal Energy Regulatory Commission relies solely on the project developer’s claims of need for the 600-mile, \$5.2 billion pipeline, which would yield substantial profit for Dominion Energy and the other private companies behind the project, while the public would be saddled with the financial, environmental and health risks.”

The fundamental issue of real need remains unresolved, according to the Southern Environmental Law Center. “FERC has failed to take a step back and address requests to weigh the demand for natural gas in this region before moving this project on to the next phase,” the center said in a release Friday.

“FERC still hasn’t addressed the most basic question hanging over this project: Is it even needed?” SELC senior attorney Greg Buppert said. “It’s FERC’s responsibility to determine if this pipeline is a public necessity before it allows developers to take private property, clear forests, and carve up mountainsides. Mounting evidence shows that it is not.”

He added, “It has become clear that FERC is accepting Dominion and Duke Energy contracts with utilities they themselves own as proof that there is a demand for natural gas to deliver electricity in our region, even though there is evidence that current and future electricity demand is flat. SELC recently requested an evidentiary hearing from FERC to establish what the true energy demands are in our region and urging FERC look behind the Dominion and Duke Energy’s self-contracts to determine whether this project is necessary.

“Today’s Environmental Impact Statement also failed to address the serious and permanent environmental harm that would result if this pipeline were built. It crosses some of the most intact conservation landscapes in the Southeast in West Virginia, Virginia and North Carolina, raising serious concerns about the permanent loss of forests and harm to the hundreds of waterways it will cut, plow and blast through,” SELC said.

Freeman added, “FERC’s action is an affront to American democracy, ignoring the thousands of citizens who participated in the public comment process and handing over the private property rights of hundreds of families to corporate interests. As landowners and business leaders, as ratepayers and conservationists, as parents and grandparents, we insist that the state agencies serve the public trust and rigorously examine the impacts of this pipeline in full view of the public,” Freeman said.

He noted key points from the FEIS, including:

- Need — FERC fails to make an independent assessment of the need for the proposed ACP, instead relying on the developer's claims that the project should be built. In doing so, it short-circuits any meaningful consideration of the alternatives that could avoid or minimize the harm caused by this project.
- Public lands — The ACP would cross 21 miles of national forest, destroying 430 acres and threatening the survival of seven federally listed species and native brook trout. The project would be a disaster for the mountain and forest headwaters of the Potomac and James rivers.
- Public process — The FEIS fails to correct or address the numerous, substantial defects in the draft EIS that government agencies and citizens alike pointed out during the public comment period. In addition, the final document fails to incorporate significant new information that has come to light since the end of the public comment period on April 6, including more than 400 pages submitted in May.
- Climate — The FEIS continues to ignore the lifecycle greenhouse gas emissions of the project. It entirely fails to consider emissions from fracking that this massive pipeline would trigger and seriously discounts the emissions from burning the natural gas.
- Environmental justice — The FEIS notes that the Buckingham Compressor Station could have serious health and safety impacts on three census tracts within one mile with predominantly low-income, minority populations, yet claims the impacts would be temporary or mitigated without adequately detailing the mitigation plans or considering any impact to safety or property values in those communities.
- Forests — Operation of the ACP (and the companion Supply Header Project) would have long-term or permanent effects on about 3,456 acres, including about 2,744 acres of upland forest (deciduous, coniferous and mixed). The recovery time for a closed canopy of mature forest and wildlife habitat could take up to a century or more.
- Mountain slopes — The project would cross more than 100 miles of slopes greater than 20 percent. Constructing the pipeline and access roads in steep terrain or areas prone to landslide increases the potential for landslides to occur.
- Ridgetop removal — The FEIS does not require Dominion to make any changes to minimize ridgetop removal, which would impact approximately 38 miles of ridgetop and result in 247,000 trips by large dump trucks to remove the overburden.
- Alternatives — The FEIS completely fails to even consider renewable energy as an alternative to this project.

The Virginia Chapter of the Sierra Club went another step on the issue of ACP need, predicting the proposed pipeline project would drive up rates compared to existing Williams Transcontinental gas pipeline facilities.

Atlantic Coast Pipeline “will charge rates 3 (to) 4 times as high as those charged by Transcontinental Gas Pipe Line under 20- year contracts for Virginia Southside Expansion Project I and VSEP II, which serve all the needs of the same power plants to be served by these pending applications,” said Kirk Bowers, P.E., VCSC pipelines campaign coordinator, in a recent FERC filing. “Dominion would receive duplicative, more costly service from the proposed ACP and DTI Supply Header projects, and captive customers would bear the consequences.”

According to Bold Alliance, FERC has permitted hundreds of projects in recent years based on nothing more than “precedent agreements,” which are contracts for shipping gas, in many cases between affiliates of the same companies proposing the pipeline. “This is overwhelmingly the case with the Atlantic Coast Pipeline,” the group said.

Citizen groups such as Dominion Pipeline Monitoring Coalition are concerned state environmental agencies are, like FERC, planning to approve the ACP before there is a thorough and public vetting of detailed water pollution prevention plans.

“My major complaint with the FERC review process and the EIS is the deferral of critical data collection and analysis until after project approval — a now-standard, regulatory-agency tactic that denies the public its rightful opportunity to introduce informed and timely comments into the record,” said Rick Webb, Dominion Pipeline Monitoring Coalition coordinator.

“A couple of clear examples related to water resource and water supply protection (are) FERC recommends completion of the construction operations and maintenance plan, which provides the essential details concerning erosion and runoff control, steep slope stabilization, stream crossings, and handling of excavated material.

“FERC is relying on the so-called best-in-class program, which Dominion proposes to use for planning construction in difficult locations, the majority of the mountainous section of the pipeline — which effectively delays provision of details until after project approval,” Webb said.

“We can appeal FERC’s eventual approval of the ACP, but FERC will allow the project to go forward while the appeal is heard. Our concern now is that the Virginia Department of Environmental Quality will take the same approach as FERC, by separating agency and public evaluation of critical construction plans from the actual state approval process. Although the DEQ and Dominion are now claiming to have provided erosion and sediment control plans and stormwater management plans for public review, the plans are incomplete, and the details are sketchy at best. The plan sheets provided for DEQ and public review are low resolution and short on detail,” he added.

The U.S. Fish and Wildlife Service said the ACP is likely to adversely affect the Indiana bat, northern long-eared bat, Roanoke logperch, Madison Cave isopod, clubshell mussel, small-whorled pogonia, and running buffalo clover.

The U.S. Forest Service has opened a comment period on its proposal to allow the ACP to impact about 430 acres of the national forests during construction. After restoration, the land

requirement would be reduced to about 214 acres for long-term operation. The final pipeline corridor would be 50 feet wide. Individuals who submitted comments to FERC during the public comment periods are eligible to object to this draft decision.

Objections may be submitted to the Forest Service for 45 days ending at midnight, Sept. 5. After objections are resolved, the Forest Service will issue a final decision on the project.

For information on the Forest Service's objection process, visit www.fs.usda.gov/gwj/.

More information on the Forest Service draft record of decision can be viewed at www.fs.usda.gov/gwj/.

The final EIS is located at www.ferc.gov.

The Final EIS closes the FERC record in the proceeding so FERC may decide the case. Therefore, there is no official public comment period, which ended formally April 6.

There is no statutory timeframe by which FERC may reach a decision.

FERC can't act on this case because it currently lacks a quorum of three. Two of the president's nominees — Robert Powelson, a member of the Pennsylvania Public Service Commission and president of the National Association of Regulatory Commissioners, and Neil Chatterjee, an energy advisor to Sen. Mitch McConnell — are awaiting a vote by the full Senate.

Their confirmation hearings were held jointly in May, and the Senate's Energy and Natural Resources Committee voted them out of committee on June 6.

The president has announced his intention to nominate two other candidates — Richard Glick, who is the general counsel for the Senate Energy and Natural Resources Committee, and Kevin McIntyre, the co-leader of the global energy practice at the law firm Jones Day.

Once the Senate formally receives the president's nomination papers, there will be confirmation hearings before the Senate's Energy and Natural Resources Committee, followed by a vote out of the committee and then a full Senate vote.

It is the president's intention to appoint McIntyre to become the FERC chairman, replacing acting chairman Cheryl LaFleur, who will step back into her role as a commissioner whose term ends June 30, 2019, once McIntyre is confirmed and sworn in.

FERC's statement

Upon issuing its final EIS, FERC staff issued a summary statement along with the report.

"The conclusions and recommendations presented in the EIS are those of the FERC environmental staff," it said. "Input from the U.S. Department of Agriculture – Forest Service, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife

Service, West Virginia Department of Environmental Protection, and West Virginia Division of Natural Resources as cooperating agencies was considered during the development of the conclusions and recommendations in the EIS.”

The forest service, FERC said, may adopt and use the EIS when it considers issuing a Special Use Permit for the portion of ACP that crosses the Monongahela National Forest and George Washington National Forest, and amendments to Land and Resource Management Plans to allow the pipeline to cross the forests. “The cooperating agencies will present their own conclusions and recommendations in their respective permit authorizations and/or Record of Decision for the projects,” FERC said. “The FERC staff concludes that construction and operation of ACP and Supply Header Project would result in some adverse effects, such as impacts on steep slopes and adjacent waterbodies and associated aquatic resources; forested vegetation; Endangered Species Act-listed Indiana bat, northern long-eared bat, Roanoke logperch, Madison cave isopod, clubshell mussel, small whorled pogonia, and running buffalo clover; and karst, cave, subterranean habitat and the species associated with these habitats,” staff said.

Implementing Dominion’s plans to minimize harm, FERC said, and its adherence to recommendations in the EIS, would “further avoid, minimize, and mitigate these impacts. Most, but not all of these impacts, would be reduced to less-than-significant levels,” the agency concluded.

These determinations are based on a review of the information provided by Dominion; field investigations; scoping; literature research; alternatives analyses; and consultations with federal, state, and local agencies, and other stakeholders, FERC said. “Although many factors were considered in our determinations, the principal reasons” for the report’s conclusions, FERC said, are:

- Dominion would minimize impacts on the natural and human environments during construction and operation using numerous measures described in their construction and restoration plans;
- All the facilities would be built and operated in compliance with federal standards, requirements, and thresholds;
- Dominion would complete a Construction, Operation, and Maintenance Plan that includes additional measures to minimize impacts on environmental resources on National Forest System lands, and the forest service’s Special Use Permit process for an easement over federal lands would provide terms and conditions for construction and operation;
- A high level of public participation was achieved during the pre-filing and post application review processes;
- Environmental justice populations would not be disproportionately affected by the projects;
- Dominion would implement a steep slope management program and slip avoidance, identification, prevention, and remediation plan to minimize erosion and landslide potential in steep slope areas;

- The horizontal directional drill crossing method would be utilized for most major waterbodies, the majority of others would be crossed with dry crossing methods, and Dominion would be required to obtain permits and mitigate unavoidable impacts on waterbodies and wetlands through coordination with the USACE and state agencies;
- FERC staff would complete the process of complying with the ESA before construction, and the Fish and Wildlife Service would issue biological opinions that include additional conservation measures, as needed, to assure the projects would not jeopardize the continued existence of any species under its jurisdiction or adversely modify or destroy designated critical habitat;
- FERC staff would complete the process of complying with the National Historic Preservation Act and implementing regulations before allowing any construction to begin; and
- Environmental inspection and monitoring programs would ensure compliance with all construction and mitigation measures that become conditions of the FERC authorizations and other approvals.

In addition, FERC staff and cooperating agencies developed site-specific mitigation measures that Dominion should implement to further reduce environmental impacts, the statement said. “The FERC staff determined that these measures are necessary to reduce the adverse impacts associated with the projects, and in part, are basing conclusions on implementation of these measures.