

# The Recorder

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2017-10-19 / Top News

## Feds approve pipelines

BY JOHN BRUCE • STAFF WRITER

WASHINGTON, D.C. — The Federal Energy Regulatory Commission on Friday, Oct. 13 quietly issued an order, on a 2-1 vote, to conditionally approve construction of the proposed Atlantic Coast Pipeline and Mountain Valley Pipeline.

Triumphant ACP applicant Dominion announced the decision less than a week prior to today's open FERC meeting. "Unprecedented scrutiny should give assurance to all communities that their voices have been heard and that the project will be built in a way that protects public safety and the environment," engineering and construction vice president Leslie Hartz said in a statement.



*Dominion Energy's 42-inch gas pipeline will enter Virginia at the crest of Allegheny Mountain, seen in the background, descend a forested ridge line, and cross the little valley that follows Warwick Run along Route 84 in Highland County. The pipeline is plotted to cross the forested spur in the foreground. The route is popular for tourists traveling to destinations in Virginia and West Virginia. Construction of the pipeline and a permanent, clear-cut right of way will degrade vistas of undivided national forest in this and other areas. (Recorder photo by Geoff Hamill)*



*This map from Dominion Energy shows the route of a proposed 42-inch gas pipeline as it crosses national forest land along Route 84 in Highland County. Route 84 can be seen following Warwick Run below the pipeline route. Route 84 is heavily traveled by tourists headed to destinations in Virginia and West Virginia, including Snowshoe Mountain resort in Pocahontas County. (Dominion Energy map)*

Senior commissioner Cheryl LaFleur cast the opposing vote, calling for far more scrutiny.

“I cannot conclude that either of these projects as proposed is in the public interest,” said LaFleur, who chaired the commission when Dominion announced the proposed ACP in May 2014.



*Cheryl LaFleur: “The needs determinations for these projects highlight another issue worthy of further discussion.” (Photo courtesyFERC)*

By contrast, fellow commissioners Neil Chatterjee, the current chair, and Robert Powelson, who joined FERC this August, voted in favor of the certificate’s approval.

LaFleur said she opposed the projects mainly because alternatives, such as a combined project with fewer environmental impacts, warrant consideration.

“Under the Certificate Policy Statement, which sets forth (FERC)’s approach to evaluating proposed projects ... (FERC) evaluates in each case whether the benefits of the project as proposed by the applicant outweigh adverse effects on existing shippers, other pipelines and their captive customers, landowners, and surrounding communities,” LaFleur said in her dissent. “For each pipeline I have considered during my time at (FERC), I have tried to carefully apply this standard, evaluating the facts in the record to determine whether, on balance, each individual project is in the public interest ... I cannot conclude that either of these projects as proposed is in the public interest, and thus, I respectfully dissent.”

She said deciding on a project requires “a careful balancing of the need for the project and its environmental impacts. In the case of the ACP and MVP projects, my balancing determination was heavily influenced by similarities in their respective routes, impact, and timing. ACP and MVP are proposed to be built in the same region with certain segments located in close geographic proximity. Collectively, they represent approximately 900 miles of new gas pipeline infrastructure through West Virginia, Virginia and North Carolina ... The record demonstrates that these two large projects will have similar, and significant, environmental impacts on the region. Both the ACP and MVP cross hundreds of miles of karst terrain, thousands of waterbodies, and many agricultural, residential, and commercial areas. Furthermore, the projects traverse many important cultural, historic, and natural resources, including the Appalachian National Scenic Trail and the Blue Ridge Parkway. Both projects appear to be receiving gas from the same location, and both deliver gas that can reach some common destination markets,” LaFleur continued.

“Given these similarities and overlapping issues, I believe it is appropriate to balance the collective environmental impacts of these projects on the Appalachian region against the economic need for the projects. In so doing, I am not persuaded that both of these projects as proposed are in the public interest.

“I am particularly troubled by the approval of these projects because I believe that the records demonstrate that there may be alternative approaches that could provide significant environmental advantages over their construction as proposed,” she said, noting an alternative route studied would reduce impacts. “Commission staff eliminated this alternative from further consideration because it failed to meet the project’s objectives, in particular that it would ‘result in a significant delay to the delivery’ due to the significant time for the planning and design that would be necessary to develop a revised project proposal.

Another alternative route evaluated “was found to have certain environmental disadvantages, such as the need for additional compression to deliver the additional gas,” but the Environmental Impact Statement acknowledged the alternative would “essentially eliminate all environmental impacts on resources along the currently proposed MVP route,” she noted.

“I recognize that the two alternatives described above were eliminated from further consideration because they were deemed not to meet each project’s specific stated goals. However, I believe that these alternatives demonstrate that the regional needs that these pipelines address may be met through alternative approaches that have significantly fewer environmental impacts. While my dissents rest on my concerns regarding the aggregate environmental impacts of the proposed

projects, particularly given the potential availability of environmentally-superior alternatives, I believe that the needs determinations for these projects highlight another issue worthy of further discussion,” LaFleur said, adding she felt there was a need to reevaluate FERC policies on the standards of needs.

“I acknowledge that if the applicants were to adopt an alternative solution, it would require considerable additional work and time. However, the decision before (FERC) is simply whether to approve or reject these projects, which will be in place for decades. Given the environmental impacts and possible superior alternatives, approving these two pipeline projects on this record is not a decision I can support.”

FERC required Dominion fulfill 73 environmental conditions in the certificate. Many conditions require Dominion to file additional information with their implementation plan before construction can begin.

For instance, Dominion must complete trace analyses in karst areas, and determine with the Department of Conservation and Recreation how the Burnsville Cove Conservation Site can be avoided.

#### *Impacts discussed*

The certificate itself echoed concerns commission staff laid out earlier during the permitting process over water quality, threatened species, particularly in the mountains.

“The ACP Project could have significant adverse impacts on karst, cave, and other subterranean habitat, as well as on the species associated with such habitat. Subterranean species are often located in only a few locations and are vulnerable to changes in hydrological pattern or water quality. Impacts associated with construction activities could have population-level impacts on these species (such as cave-adapted amphipods),” the certificate stated.

Commission staff identified 36 federally listed threatened or endangered species (or federal candidate species or federal species of concern) that could be present in the vicinity of the projects.

Dominion was required to minimize impacts, relocate mussel and non-mussel species, and make plans for restoring stream beds.

FERC did not, however, find evidence other than short-term effects of construction on the tourism industry or recreational activities.

Opponents had asserted people should be able to make comments on the final EIS since so much additional information was provided since it was issued; FERC said it wasn’t legally required to allow more comments, saying there were no substantial changes between the draft and final EIS.

FERC was also satisfied with Dominion’s plans to cross steep topography, though it required Dominion to file final plans.

As to karst topography and the groundwater involved, FERC agreed with DCR that adhering to the submitted karst mitigation plan would be sufficient, and no realignment of the route was needed.

FERC concluded the four public and 236 private water wells near the project should be adequately surveyed, and avoided if possible, but said, “we believe that Atlantic’s commitment to relocate any system would resolve any issues, or that reroutes would be accommodated ... In situations where project-related construction damages the quantity or quality of water supplies, the applicants have committed to compensate the landowner for damages, repair or replace the water systems to pre-construction conditions, and provide temporary sources of water.”

### *Opponents vow to fight on*

Reactions were swift from those opposed to the projects. The Allegheny-Blue Ridge Alliance, a coalition of 52 organizations, “is appalled at the action,” it said the night of the decision. “The commission’s judgment has been made in advance of necessary and required decisions by the U.S. Forest Service, the U.S. Army Corp of Engineers and the state environmental authorities in the affected states of Virginia, West Virginia and North Carolina on critical environmental issues. We concur with the thoughtful dissent of Commissioner LeFleur, who has served on the commission for seven years, raising serious questions about the basis of need for both the ACP and the Mountain Valley Pipeline and expressing concerns about environmental impacts that both projects present. The majority decision does not reflect an understanding of the issues at hand and is clearly not in the public interest. It calls into serious question the agency’s regulatory credibility.”

Lara Mack, Virginia field organizer for Appalachian Voices, an organization advocating for healthy communities and environmental protection, released the following statement, said, “We condemn FERC’s decision to grant approval for both of these pipelines, but ultimately, the fate of these projects will be decided by Virginia, West Virginia and North Carolina. It is up to the states to properly evaluate the harm posed by these projects and deny their approval.

“In Virginia alone, the pipelines would cross pristine streams, rivers, wetlands and other waters at more than 1,000 places – including tunneling dozens of feet underneath the James and other major rivers – and bring significant peril to the quality and safety of our water supply,” Mack said. “While we expected this decision given FERC’s history of rubber stamping approvals — including pipeline projects that have been rejected by courts and sent back to the agency for further review – we are nonetheless disappointed in the disregard for Virginia’s water quality.”

She said Virginia residents will now rely on the State Water Control Board, which has the authority to deny the required state water permits if the pipelines are likely to fail Virginia’s water quality standards. “We call on the water board members to fulfill their duty to protect Virginians and deny the energy companies their needless pipelines, which would harm Virginia businesses, communities and residents across the state. At the very least, we urge them to meet their obligation to request more information and time to ensure they are sufficiently analyzing the effect on our water.”

“Friends of Nelson” in neighboring Nelson County, issued a statement and call to action. “We all knew that FERC would use its rubber stamp to issue a certificate to Atlantic Coast Pipeline LLC, but we weren’t sure just when. Now that FERC has given its blessings to this wretched project, Friends of Nelson, and our many friends and colleagues throughout Virginia, North Carolina, and West Virginia are moving forward on strategies that could not be initiated until now,” the group said. Friends of Nelson vowed to fight to stop the ACP “in every way that we can,” which includes keeping information flowing, and being represented in legal actions. Members said they would be “keeping pressure on all federal, state and local agencies to do the right thing ... Remember: it only takes one agency or one judge doing the right thing to stop this runaway train.

“The FERC process was expedited by executive order and has left many regulatory requirements incomplete. The only FERC commissioner who had a deep understanding of the ACP, and with whom Friends of Nelson representatives met three years ago, filed a dissent and voted against the issuance of the permit on grounds that it was not deemed necessary. The only two commissioners who voted for the certificate have served less than 2 months with FERC and were both Trump appointees.

“A legal challenge to the issuance of the FERC certificate is in the works,” the group said.

The organization also noted several other permits and approvals Dominion must have, including:

- The Forest Service on required forest plan amendments and special use permits;
- The U.S. Fish and Wildlife Service on its regulatory requirements for endangered species;
- The Federal Emergency Management Agency and affected counties on regulations for construction and hazardous materials in floodplains; and
- Section 401 (water quality, erosion and sediment control and stormwater management) and 404 (water discharges) permits under the Clean Water Act by the Virginia State Water Control Board and Department of Environmental Quality (or Army Corps of Engineers).