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Pipeline opponents argue agency's bias to industry unfair

BY JOHN BRUCE • STAFF WRITER

MONTEREY — Friday the 13th's federal 2-1 approval of proposed Atlantic Coast and Mountain Valley pipelines in Virginia and West Virginia has spurred swift responses from regional citizen groups, industry observers, and government.

Lew Freeman of Hightown, president and executive director of citizens group Allegheny Blue Ridge Alliance, pointed out the Federal Energy Regulatory Commission's new leadership improperly favors investor-owned utilities like ACP applicant Dominion over other stakeholders such as private landowners.

"FERC chairman Neil Chatterjee's remarks on Oct. 17 to the Energy Bar Association portray a bias that is at decided odds with the even-handedness the public has the right to expect from a federal regulatory agency," Freeman said in a statement. "His speech reflects a presumption that whatever an applicant company states to be the justification for a proposed project should be accepted by the agency because the applicant has — in Chairman Chatterjee's own words — 'a much clearer understanding of the market need for the gas than we could develop through studies here in D.C.' Such blatantly voiced favoritism for an industry point of view is an affront to the regulatory integrity of the agency," Freeman said.

FERC relies on precedent agreements, which are private contracts between pipeline companies, to demonstrate evidence of market demand for a new pipeline rather than studying economic need in addition to environmental impact.

Independent energy industry sector research firm ClearView Energy Partners LLC managing director Christine Tezak said the FERC controversy may lead to change. She suggested the commission's rare split decision will boost political pressure on FERC to weigh regional pipeline projects like the proposed ACP and MVP together instead of separately. She said the agency will likely be asked to combine studies of economic need and environmental impact in future applications.

Commissioner Cheryl LaFleur's dissent, based on her belief the two pipelines should be combined to reduce environmental impact, and the agency should change its methodology, will fuel more court petitions to question FERC pipeline approvals, other analysts advised.

FERC chair Chatterjee said a Washington, D.C. Court of Appeals Aug. 23 ruling, that the agency should consider greenhouse gas emissions among environmental impacts, would not significantly change the permitting process. He argued his agency should stick to its routine, streamline licensing and reduce delays of fossil fuel and other energy infrastructure construction.

The agency licensed the 600-mile, \$5.1 billion proposed ACP one business day before the Virginia Outdoors Foundation acceded to Dominion's land-conversion proposal allowing the pipeline to cross 10 Bath, Highland and Augusta open-space conservation easements in exchange for Hayfield Farm and \$4 million.

The FERC chair's remarks last week imply easing the load on applicants was much more on his mind than protecting some of the most pristine landscape on the East Coast.

"One of the biggest complaints that I hear from stakeholders is that it takes too long to review applications for natural gas and hydropower projects," Chatterjee said in his keynote address to the Energy Bar Association — his first public event since taking the oath of office in August. "That's not to say that the commission doesn't have success stories. Since a quorum was restored on Aug. 10, my colleagues and I have voted on around five (billion cubic feet per day) of new natural gas pipeline capacity — the most recent examples being the approval of the Atlantic Coast and Mountain Valley Pipeline projects just last week. The opportunity to move forward with these critical projects so expediently after the restoration of a quorum was no small accomplishment."

"The dissents to Friday's decisions approving the Atlantic Coast and MVP pipeline projects suggested that FERC should depart from its long-standing policy of relying on precedent agreements with shippers to demonstrate economic need in favor of weighing a broad range of economic, social and aesthetic values.

"Although I respect my colleague's position on this question, I strongly disagree. The commission has historically prioritized precedent agreements in its analysis because those are clear, unequivocal statements of economic need by the market itself. The companies who are willing to enter into contracts to pay for transportation on the service on a pipeline have a much clearer understanding of the market need for the gas than we could develop through studies here in D.C.

"The regulatory uncertainty created by burdensome delays in the project review process are problematic for numerous reasons for those on both sides of the issue. Here's what I mean. Delays discourage investment in projects. It's a question fundamentally of opportunity costs: if I were a financial investor or a project sponsor, I'd want predictable cash flows and return and would be reluctant to put my money toward a project for which there's no predictable length of time for the regulatory review process. Furthermore, if FERC believes my project is a non-starter, I would prefer to learn that sooner rather than later so I can invest elsewhere.

"Delays harm the communities in areas surrounding a project. When I look through the dockets for our hydropower licensing and natural gas pipeline proceedings I see both adverse and supporting comments from concerned citizens in communities near a project. I see comments from union laborers who recognize these projects as a source of stable jobs for hardworking middle class Americans. I see comments from residents of struggling small towns who see a

pipeline or a hydropower project as a long-term source of tax revenues that they desperately need to fund essential social services.

“And, I see comments from landowners who are concerned that a project infringes on their property rights as well as comments from activists concerned about its environmental impacts. FERC owes both sides an opportunity to articulate their position(s), to have (them) reviewed thoughtfully by the commission, and ultimately to receive a timely up-or-down decision. Transparent, predictable decision-making helps each of the concerned Americans I described, on both sides of the issue. I think we owe it to them to provide such a process.

“Finally, delays can cause broad-based harm to end users and consumers. Delays can have direct impacts, hitting consumers in the pocketbook by way of higher monthly electric or natural gas bills. They can also result in indirect impacts to consumers: when delays increase the price industry pays for energy, the costs of goods and services throughout the economy inevitably increase,” Chatterjee said.

A local government in North Carolina responded in the wake of the FERC pipeline approvals by demanding transparency from developers. A Virginia group followed suit.

Citizens group Friends of Nelson announced in a news release it asked Nelson County supervisors last week to follow the example of Wilson County, North Carolina, seeking answers to questions about safety and the proposed Atlantic Coast Pipeline.

Wilson County commissioners voted to ask pipeline developers Dominion and Duke Energy for full disclosure, including why they have not offered compensation to landowners within the blast zone.

A letter to Nelson supervisors from Friends of Nelson has asked the county to consider potential zoning and economic impacts from the possible construction of the Atlantic Coast Pipeline.

“This week it has been revealed that there is an “industry (effort) to create a ‘consultation planning zone,’ which extends 660 feet from the center of any high pressure natural gas pipeline. The purpose of the zone or corridor is to ‘restrict development’ within those parameters for the lifetime of the pipeline.” (www.wilsontimes.com/stories/county-voices-concern-over-pipeline)

“Both the industry and the Pipeline Hazardous Materials Safety Administration have recommended that county governments restrict development through actions by county governing bodies. This would create a 4,500-acre area that would be highly restrictive of development: an area a quarter of a mile wide, stretching for over 23 miles and bisecting Nelson County from Reeds Gap to the James River.

“It was noted this week that county commissioners in Wilson County (N.C.) have formally expressed reservations on several issues related to the pipeline project and its officials Tuesday, including a ‘development dead zone’ in Wilson County, full and complete disclosures and transparency in project planners’ dealings with property owners and the pipeline’s quality of construction and safety.

“Having read most of the Pipeline Informed Planning Alliance guidelines laid out by PHMSA, it’s clear that the expectation is that landowners along these corridors — approximately three and one-half football fields in width, on either side of the pipeline — would be obligated to notify the pipeline owner of any land-disturbing activities in these corridors,” said Marilyn Shifflett of Friends of Nelson.

“Owners considering construction or logging on corridor properties would need to work with the ACP to ensure the safety and integrity of the pipeline. In addition, developers would need to consider evacuation routes for residential developments when planning private roads. Localities failing to enact ordinances that take these guidelines into account face possible safety and liability concerns,” Shifflett continued. A resolution passed by Wilson County commissioners states that ACP officials (have) “failed to inform property owners or local government” of their liabilities associated with the Atlantic Coast Pipeline.

“The resolution further noted that property owners within the dead zone have not been offered compensation for restrictions placed on their property outside of the construction and permanent easements. They say these types of development restrictions will severely and negatively affect the value of land and property owned by county residents. The potential environmental and economic impacts to Nelson County have been well-documented by a 2016 economic study, commissioned by Friends of Nelson, which estimates total economic losses to Nelson County of up to \$24.5 million dollars per year, with additional one-time costs of up to \$41 million.

“The Federal Energy Regulatory commission makes no secret of the fact that safety is not among their concerns when approving pipeline permits and that this issue falls under the purview of local governments and PHMSA. Hence, siting the pipelines has little to do with hazard mitigation. Yet PHMSA guidance states that “placing people in proximity to existing transmission pipelines can increase their risks resulting from the unintentional release of products transported through the pipelines. Such releases can result from a variety of causes and may result in injuries or fatalities as well as property and environmental damage... land development in proximity to pipelines can increase such risk. “PMHSA advises localities to place ‘additional development regulations, standards or guidelines to ensure safety’ on all property within 660’ of any natural gas pipeline. They also state that the size of this Consultation Planning Zone should be adjusted depending on the operating pressure, pipe diameter and site-specific topography.

“Given that 660 feet is only 60 percent of the 1,100-foot Potential Impact Radius (aka the blast zone) for the 1,440 psi, 42- inch pipeline ACP proposes to ram through Virginia, it seems to me that a prudent Consultation and Planning Zone in Nelson might actually be significantly larger than the basic 660 feet,” said Joyce Burton of Friends of Nelson in the letter. “Of course, that would mean that even more landowners will be negatively impacted if this behemoth is built — not only by the dangers of living next to a potentially explosive pipeline, but also by what could amount to a de facto down-zoning of their properties.

“The Pipeline Informed Planning Alliance was born from a push from the industry, and while careful not to regulate local boards and commissions, they do imply that liability at every step does not rest with the owners or users of the pipeline,” the letter concludes.