

The Recorder

IN THE COMMUNITY, ABOUT THE COMMUNITY, SINCE 1877.

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Spineless secrecy

Gutless. Cowardly. Lily-livered. Weak-willed. Impotent.

All are synonymous with the Federal Energy Regulatory Commission.

The commissioners of this agency, who on a 2-1 vote Friday privately approved a permit for Dominion Energy's Atlantic Coast Pipeline, lack any semblance of objectivity, thorough thinking, or common sense.

Here's how we know — and this is one tiny example of how this agency operates. A microcosm, if you will, of its ineptitude.

We were all set to attend the scheduled Oct. 19 meeting (today) at which, as far as we could tell, the commissioners would decide the fate of the ACP and Mountain Valley Pipeline.

Then we saw the notice, dubiously dubbed a "Sunshine Act Meeting Notice," as some nod to openness and transparency that apparently doesn't exist.

Hmm... something had been removed under "gas" on the agenda — "G 1 Omitted," it said. Perhaps they weren't going to take up these pipeline project applications this day, we thought.

We asked Mary O'Driscoll, director of media relations at FERC's office of external affairs, hoping to confirm whether we should keep our plans to travel to Washington, D.C., to report on the commissioners' discussion.

"What exactly is the thing that was omitted?" we asked her.

Her response: "We cannot discuss what is on the Sunshine Notice for a meeting. And FERC does not discuss what 'omitted' means."

We did not make this up. This was the actual response from FERC about whether the project applications were on the agenda. The so-called "Sunshine Notice"? Can't discuss what's on it. What was omitted from the agenda? We don't discuss what "omitted" means.

Seriously?

FERC provides videos of these meetings. On its website, the agency indicates those are usually posted immediately following the meeting or the next day. None from Friday has been posted as of this week. If there was a meeting, it certainly wasn't public.

FERC did issue its findings in more than 100 pages, so someone had been well prepared to offer a conclusion in advance of the meeting.

The findings including a surprising dissent from commissioner Cheryl LaFleur. We were pretty hard on Ms. LaFleur a couple of years ago, when she complained there was too much opposition to the projects pending FERC review (editorial March 26, 2015).

“Unprecedented opposition” faced the nation’s natural gas pipeline development, LaFleur said then, when she was FERC chair. She talked about the volume of people opposed to building more pipelines, and how these folks were overwhelming her office and staff.

“We have a situation here,” she said. “Pipelines are facing unprecedented opposition from local and national groups including environmental activists ... These groups are active in every FERC docket, as they should be, as well as in my e-mail in-box seven days a week, in my Twitter feed, at our open meetings demanding to be heard, and literally at our door closing down First Street so FERC won't be able to work.”

There's a reason for that, we noted. And it's valid more than ever.

The way the process is devised, pipeline developers and the gas industry as a whole have enormous power, advantages, and privileges over the citizens they affect. And people are tired of being pushed around, tired of their own land being taken away, and tired of the effects this industry has on their health and environment.

At the risk of sounding conspiratorial, let's look at how this process unfolded just in the last few months.

Dominion repeatedly argued how much the gas they will transport is needed in the U.S., noting most of it already has buyers. Then, thanks to an AP reporter, we learn that “everyone knows” the company plans to extend the project to South Carolina and points beyond. Of course they do. They just didn't admit it, openly.

The Virginia Outdoors Foundation delayed its decision on whether Dominion could cross conservation easements with the pipeline, ostensibly a request by Dominion to see whether FERC issues its permits first. Dominion, of course, knew if FERC granted a permit, VOF would have a tough time denying its applications.

VOF put the matter on its agenda for a specially called meeting on Monday. FERC issued its decision secretly and without warning, on the prior Friday evening.

That's no coincidence.

Dominion came to the VOF meeting with a prepared statement — the company knew which way VOF would decide.

FERC was missing enough commissioners to have a quorum for decisions for months. Suddenly this summer, two appointees are approved. LaFleur is the only commissioner who could possibly have sorted through the nearly three years worth of information and comments to reach her decision. The other two? Think they just crammed like college kids the night before an exam before they made their decision? If so, they still got a big fat F on this test.

And Virginia's Department of Environmental Quality — it waited months and months before it finally felt pressured enough to consider the potential adverse impacts to our water. When it agreed to hold public hearings, those got on the agenda long before final information was submitted, and then, DEQ schedules "public meetings" for December, weeks after the FERC decision gets issued. No coincidence here, either.

Note that neither West Virginia nor North Carolina rested on their laurels like Virginia did. In fact, West Virginia too hastily approved permits, and then wisely rescinded them citing the need for more detailed information. North Carolina rejected Dominion's application outright. But Virginia, where the governor has lauded the proposed pipeline from its onset, thanks in part to a mighty cozy relationship with Dominion bigwigs, has dragged its heels.

Talk about having the deck stacked. All the industry and government officials knew how this would play out while citizens were left in the dark.

FERC failed to seriously account for the long-term environmental risks posted by the ACP and MVP, comprehensively. LaFleur knew this, and said as much in her dissent.

By creating this "pre-filing" process for the industry, pipeline companies can speed up the rate for obtaining permits. Why do we allow the industry to game the regulatory process? We don't. Players and politicians do.

If FERC is to minimize risks to the public, the agency needs to take its time in evaluating every proposed project carefully, not quickly. Instead, as we learn in Friday's decision notice, FERC says that's not necessary. Especially if it causes delay. If all the facts and studies aren't in, FERC says, that shouldn't hold up progress.

LaFleur correctly noted FERC should look at the cumulative effect of more gas pipelines — is the ACP or MVP needed, on balance with the aggregate environmental damage to the region? But of course we know FERC, being the overwhelmed federal agency it seems to be, depends on industry players to examine these things and determine what's best for their companies, no matter what's best for the rest of us.

That "unprecedented" outcry stems directly from the industry's failure to protect us, and FERC's failure to do the same. There is little evidence of a sturdy, unblemished record of oversight or

protection. Instead, the gas industry has more control than it should over FERC, state agencies, and lawmakers who make up the rules.

LaFleur also correctly noted this decision seems to be based heavily on whether Dominion will be inconvenienced — delays in time, or incurring more costs to move or alter the pipeline route. As one conservative writer noted this week, “With the FERC ruling, the question isn’t whether the Atlantic Coast Pipeline project will be built but how tight the water-quality regulations will be and how much the controls will add to costs and affect pipeline profitability. Dominion Energy has ordered and stockpiled hundreds of million of dollars worth of pipe with detailed specs in anticipation of the construction project — it cannot afford to not go forward.”

And there you have it — by all means, let’s not cost these companies more money.

They chose to proceed with getting their pipe piled up, and securing other contractors; Dominion even pressured FERC by insisting if it doesn’t start clear-cutting soon, the timeline into winter will add expenses and delays. And FERC was complicit.

This process is set up to ignore the impacts to regular citizens and their land, and make it nearly impossible to fight those decisions without considerable financial resources. It’s no wonder so many fight for their right to bear arms in a “well regulated militia,” as outlined in our Constitution in 1791. If you’re going to protect your property from the government, you just might need those arms after all.

No, don’t call us: we’re not advocating violence. Every protest from pipeline opponents has been about as peaceful as it gets. But we’re beginning to understand the extremists who are deeply suspicious about government’s abuse of power. Has any landowner opposed to these projects felt their voice has been heard? None we know of.

Instead, FERC and every other federal and state agency, now including the Virginia Outdoors Foundation, has proved time and again they do not have the courage to stand up to the all-powerful gas industry. This game was always rigged, folks. As we predicted not long ago, the playing field will now move into the courts. And we’ll find out just how much influence the natural gas industry has over our judicial system.

Nevertheless, the court of public opinion remains a critical place for opponents. They must stay in the arena, firmly engaged. There are more battles ahead. And who knows? Maybe the DEQ will find a spine where FERC could not.