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Furtive pipeline deal begs legal answers

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MONTEREY — What has been described as a $58 million confidential accord between Dominion and the state of Virginia guaranteeing Atlantic Coast Pipeline regulatory approval is raising questions over potential litigation.

Dominion Energy and Virginia's then-outgoing McAuliffe administration closed a little-known deal in late December to relieve Dominion of forest fragmentation and water related liability for its proposed pipeline in exchange for paid mitigation measures.

The price of soil and water

The agreement, made days before McAuliffe visited Highland County last month, puts a $58.875 million value on Virginia's land and water — equivalent to just over the estimated average cost of about 6.4 miles of the proposed $5.5 billion, 600-mile interstate fossil fuel project intended to pump fracked gas into the Southeast.

The six-page deal effectively leaves Dominion off the hook, stating the bargain "fully meets the commonwealth's natural resources objectives in the context of the project."

"The parties further agree that such amount fully satisfies any and all mitigation responsibilities related to and otherwise fully offsets the direct or indirect forest-related impacts of the project in Virginia," another section of the agreement states.

Signing the Dec. 28, 2017 agreement were Molly Ward, secretary of natural resources, and Leslie Hartz, Dominion vice president of engineering and construction.

The agreement spurs questions of authorization about how it came about, who chose the recipient agencies, and why the deal waited until the final days of a gubernatorial administration that worked consistently in the proposed pipeline's favor.

Under the “Memorandum of Agreement for Mitigation of Virginia Forest Fragmentation Impacts of Atlantic Coast Pipeline,” Virginia Outdoors Foundation would receive $24.65 million; U.S. Endowment for Forestry and Communities would get $9 million; and the Charlottesville Area Community Foundation would get $5 million out of the $58.875 million pot.

More land swaps ahead?

“The Commonwealth shall work with the Virginia Outdoors Foundation and the US. Endowment for Forestry and Communities to develop project selecation criteria and a process for evaluating appropriate sites that are consistent with state agency mitigation standards and practices and national standards for mitigation articulated by a wide range of federal agencies,” the agreement states.

Would-be major recipient Virginia Outdoors Foundation voted last fall to allow Dominion to swap Hayfields Farm and other property in the interest of allowing Dominion to violate open-space land easements and allow the pipeline route to cross them.

All of the Dominion mitigation payments are contingent on the Federal Energy Regulatory Commission issuing

“Final Notice to Proceed” for the ACP.

Of the total mitigation amount, $19.2 million would go toward offsetting water quality degradation. The Virginia Association of Soil and Water Conservation Districts would get $11.5 million, and $7 million would go to the Virginia Environmental Endowment.

The water-related section again punctuates Dominion’s liability relief: “The parties agree that such amount fully satisfies any and all mitigation responsibilities related to and otherwise fully offsets all water quality impacts caused by forest fragmentation that are not otherwise avoided by Atlantic’s construction methods and environmental protection measures.”

According to the progressive and Democratic blog site, Blue Virginia, “This language leaves the state without a remedy if the cost of damage to Virginia’s forest exceed the amount in the fund. Construction accident – use the fund. Pipeline leaks two years from now – use the fund. Pipeline explosion ten years from now – you’ve already been paid, Virginia. And if the money is gone? Too bad. You don’t need to be a lawyer to understand that’s what ‘fully satisfied’ means.

‘Pay to play’

Blue Virginia contends the agreement contains something far worse. “It says exactly how this agreement came about – ‘The Commonwealth requests, and Atlantic agrees to pay’ the stated amounts – and then discusses how Dominion will get its money back ‘in the unanticipated event that the project fails to obtain and maintain state approvals.’

“The key word there is ‘unanticipated.’ It suggests that Dominion was not just capping its liability but rather trading $58 million for a commitment from McAuliffe that the pipeline would be approved – a commitment that rejection would be, in the words of the agreement, an ‘unanticipated event.’ Paying millions of dollars to approve a private company’s pet project is exactly what it looks like – a good old fashion pay-to-play scheme – exactly like the one now being roundly criticized, even by pipeline supporters, in neighboring North Carolina.

“If Virginia ultimately approves the Atlantic Coast Pipeline, it will be noted that the going rate for that regulatory approval is $58 million – exactly the amount Dominion paid for approval in North Carolina and now, apparently, in Virginia. Except that Virginia’s agreement is far worse than the one signed by North Carolina. North Carolina’s agreement does not say that the $58 million paid to the state is in return for a release of further liabilities. There is no such release language in the North Carolina agreement,” Blue Virginia said, adding the agreement leaves the Virginia open to litigation.