



ABRA Update #193 – August 16, 2018

ABRA Members Sue FERC Over Original Approval of ACP

A group of 13 conservation groups – 10 of whom are ABRA members – filed suit on August 16 against the Federal Energy Regulatory Commission (FERC) challenging the Commission’s October 13 approval of the Atlantic Coast Pipeline (ACP) and, in the groups view, its wrongful refusal to look behind the inflated claims of Dominion Energy, principal partner in the project, that the pipeline is needed in Virginia and North Carolina markets. [The suit was filed on behalf of the petitioners by the Southern Environmental Law Center \(SELC\) and Appalachian Mountain Advocates.](#) It follows the August 6 decision by the Fourth Circuit Court of Appeals to vacate two key permits for the ACP and by an August 10 stop work order issued by FERC for the project.

“FERC ordered the ACP construction stopped because the Fourth Circuit determined that permits were issued without proper scrutiny. On the very same day, FERC rejected a rehearing request in which the conservation groups asserted that it also rushed through its decision to permit a pipeline that we don’t need,” said Southern Environmental Law Center Senior Attorney Greg Buppert.

FERC’s 2-1 decision to reject a rehearing was accompanied by a dissenting opinion from [Commission Cheryl LaFleur](#) that directly questioned whether there is sufficient evidence to support the need for two pipelines in the region. Commissioner Richard Glick, who did not participate in the vote, also issued a statement saying he did not vote “solely to enable those parties challenging the Certificate to have their day in court.” Commissioner Glick also said, “I share many of the concerns articulated in Commissioner LaFleur’s dissenting opinion and I do not believe that the ACP Project has been shown to be in the public interest.” (See below related stories on last week’s decision by the Fourth Circuit Court of Appeals and by FERC.)

“It’s clear that even within FERC there are questions about the need for this pipeline and the unnecessary harm it will cause to the surrounding communities, the environment, and the customers in Virginia and North Carolina that will bear the financial burden,” said Buppert.

Most of the arguments put forth by ACP developers three years ago have crumbled. The misinformation ACP developers used as justification for this pipeline that we know are false includes:

- [ACP is needed for power plants](#) - Gas-fired power plants in Virginia and North Carolina are already connected to the existing pipeline system and will have few direct connections to the ACP.
- [Savings for residents](#) – Testimony at the Virginia State Corporation Commission has revealed that customers will pay anywhere from \$1.6 – \$3B for the ACP – and could be paying for this pipeline in their monthly bills regardless of whether the gas is used to generate power or not.

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- Savings for businesses – The fracked gas from the ACP will be more expensive than the gas that is currently available in Virginia through existing infrastructure, which means no savings for businesses.
- Jobs – Without cheaper gas as an incentive, the pipeline is not likely to attract new businesses and new jobs to our region.

The petitioning groups in the suit are: Appalachian Voices, Chesapeake Bay Foundation, Chesapeake Climate Action Network, Cowpasture River Preservation Association, Friends of Buckingham, Highlanders for Responsible Development, Piedmont Environmental Council, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, the Sierra Club, Sound Rivers, Virginia Wilderness Committee, Wild Virginia, and Winyah Rivers Foundation.

FERC Issues Stop Work Order for ACP, Over Pipeline’s Arguments

On August 10 the Federal Energy Regulatory Commission (FERC) issued a stop work order for the Atlantic Coast Pipeline. The action was prompted by the April 6 Fourth Circuit Court of Appeals decision to vacate two key permits for the pipeline from the U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS), [discussed at length in last week’s ABRA Update](#). The key language in the [FERC letter to Dominion Energy](#) says:

Atlantic and Dominion Energy Transmission, Inc. (DETI) are hereby notified that construction activity along all portions of the ACP and Supply Header Project and in all work areas must cease immediately, with the exception of any measures deemed necessary by appropriate agencies such as NPS and the U.S. Forest Service, or by FERC staff to ensure the stabilization of the right-of-way and work areas.

Atlantic Coast Pipeline, LLC’s (ACP, LLC) had told FERC in an August 7 letter about the Fourth Circuit decision that: “The Court’s opinion has not changed anything with respect to the implications” of the FWS’s biological opinion on endangered species, and that the company “expects the NPS will promptly reissue the permit” vacated by the court, adding that no further information was expected to be needed by the NPS.

In an [August 13 response to FERC’s stop work order](#), ACP, LLC argued for permission to construct segments of the ACP on the basis of “independent utility,” contending that even if the ACP as proposed and approved is never built, certain “substantial aspects” of the project can be repurposed for other projects and should, therefore, be allowed to proceed. This contention was rebuffed in an [August 13 letter to FERC by the Southern Environmental Law Center and Appalachian Mountain Advocates](#) on behalf of their respective client groups. Their letter urged FERC to reject the request, pointing out that ACP, LLC’s proposal “would constitute, in effect, a wholly separate pipeline project, with purposes and customers distinct from the ACP” and that the company “would have to apply to the Commission for a certificate of public convenience and necessity.”

Rehearing Request for ACP Decision Rejected by FERC

The Federal Energy Regulatory Commission late Friday night, August 10, rejected the many petitions that have been pending before the Commission to rehear its October 13, 2017 decision to issue a permit for building the Atlantic Coast Pipeline (ACP). The action occurred on a 2-1 vote, with Commissioner LaFleur dissenting. FERC Chairman McIntire and Commissioner Glick did not to participate.

The 162 page Order, including Commissioner LaFleur's 12 page dissent, is available [here](#). ABRA has prepared a three-page summary of highlights from the Order that is available [here](#).

[Commissioner LaFleur's dissent to the decision](#) stated:

I did not support the Commission's underlying order authorizing the ACP Project because I concluded the project as proposed was not in the public interest.² My consideration of the ACP Project was influenced by my consideration of the certificate application of the Mountain Valley Pipeline (MVP) Project,³ which was decided on the same day as the ACP Project. After carefully balancing the aggregate environmental impacts resulting from the authorization of both of these projects against the economic need of the projects, I could not find either proposal in the public interest. I am dissenting today on the rehearing order for the following reasons: (1) I still do not find the ACP Project is in the public interest. I disagree with the Commission's approach to evaluating system and route alternatives, particularly in light of the recently-issued Fourth Circuit Court of Appeals (Fourth Circuit) decision which vacated the National Park Service's (NPS) federal authorization allowing the ACP Project to cross the Blue Ridge Parkway; (2) I disagree with the treatment of climate impacts; and (3) I have serious concerns regarding the majority's articulation of how a project's environmental impacts weigh into the Commission's finding that a project is required by the public convenience and necessity under the Natural Gas Act (NGA).

Commissioner Glick issued a [statement explaining why he did not participate in the vote](#):

I chose not to participate in today's order denying rehearing of the Commission's October 13, 2017 order issuing a Certificate of Public Convenience and Necessity to the Atlantic Coast Pipeline (ACP) Project (CP15-554-002; CP15-555-001; and CP15-556-001) solely to enable those parties challenging the Certificate to have their day in court. If I had voted, the rehearing order would have failed on a 2-2 vote (Chairman McIntyre also is not participating in this proceeding), and pursuant to the requirements of section 19 of the Natural Gas, the appellate courts would not have had jurisdiction to review the Commission's decision to grant the Certificate. I share many of the concerns articulated in Commissioner LaFleur's dissenting opinion and I do not believe that the ACP Project has been shown to be in the public interest.

Summary of All comments to State Water Control Board Available

ABRA member Wild Virginia this week released a comprehensive summary of the more than 13,000 comments filed with the Virginia State Water Control Board (SWCB) regarding the adequacy of the U.S. Corps of Engineers' Nationwide Permit 12 (NWP 12) regarding stream crossings for the ACP. The 104-page summary, prepared by Wild Virginia's Director of Conservation, David Sligh, has been sent to members of the SWCB. A copy of the summary is available [here](#). The Virginia Department of Environmental Quality had promised to prepare its own summary of the comments filed on the NWP 12 issue, but at this writing, it is not yet available to the public.

The SWCB's next regular meeting is Tuesday, August 21 at 9:30 am at the Pocahontas Building, First Floor House Committee Room, 900 East Main Street, Richmond, VA 23219. The agenda calls for a report in the afternoon from DEQ staff on the filed comments. It is not known what action, if any, will be taken by the SWCB in response to the comments that were submitted. While there is a public forum comment period scheduled at the end of the meeting agenda, there is not an opportunity for the public to comment to the Board in advance of its considering the NWP 12 agenda item.

Over 50 Groups Urge Governor Northam to See Pipeline Problems First-Hand

A letter from over 50 conservation organizations to Virginia Governor Northam this week calls for the Governor to see for himself the environmental dangers to Virginia posed by the Atlantic Coast Pipeline and the Mountain Valley Pipeline by visiting the property of Bill and Lynn Limpert in the Little Valley area of Bath County, VA. ABRA and several of its members were signatories to the letter, a copy of which is available [here](#).

In the News:

Local/Atlantic Coast Pipeline

Feds halt pipeline

- The Recorder – 8/16/18

https://www.abralliance.org/wp-content/uploads/2018/08/Feds-halt-pipeline-Recorder_20180816.pdf
Short key federal permits, Atlantic Coast Pipeline is forced to stop working. But Dominion hasn't lost its attitude.

Related:

- https://www.washingtonpost.com/local/virginia-politics/federal-agency-halts-all-work-on-atlantic-coast-pipeline-after-judges-revoke-permits/2018/08/11/805e6fec-9d65-11e8-8d5e-c6c594024954_story.html?noredirect=on&utm_term=.a6938f069e9f

Let it go, Dominion

- The Recorder – 8/16/18

https://www.abralliance.org/wp-content/uploads/2018/08/Let-it-go-Dominion-Recorder-editorial_20180816.pdf

If Dominion could quickly – literally, in two days – propose another way to get gas to proposed markets, why insist it could not be done any other way than the full Atlantic Coast Pipeline? (hint: more \$)

Related:

- <http://www.naturalgasintel.com/articles/115443-acp-pushes-ferc-to-allow-work-to-continue-on-much-of-project>

Unpacking the Recent Federal Court Rulings Turning Pipeline Development on its Head

- WV Public Broadcasting – 8/13/18

<http://www.wvpublic.org/post/unpacking-recent-federal-court-rulings-turning-pipeline-development-its-head#stream/0>

Since getting the green light from FERC last year, developers of both the Atlantic Coast Pipeline (ACP) and Mountain Valley Pipeline (MVP) have found themselves spending a lot of time in the courtroom.

Atlantic Coast Pipeline – thinking about our safety?

- The Recorder – 8/16/18

https://www.abralliance.org/wp-content/uploads/2018/08/Atlantic-Coast-Pipeline-thinking-about-our-safety-Recorder_20180816.pdf

Thinner pipe and less-frequent surveys for leaks or damage...what could go wrong?

UPDATE: FERC grants permission to continue construction on 3 areas of Atlantic Coast Pipeline

- WV News – 8/14/18

https://www.wvnews.com/news/wvnews/update-ferc-grants-permission-to-continue-construction-on-areas-of/article_7bad634b-86c1-530c-a888-6e85ff52bf14.html

Work includes completing borings under two roads and certain activities at the Mockingbird Hill Compressor Station.

Late Friday Night, FERC's Trump Appointees Reject Rehearing Request for ACP on 2-1 Vote; Powerful Dissent by Obama-Appointed Commissioner LaFleur; Other Trump Appointee Abstains But Agrees with LaFleur

- Blue Virginia – 8/11/18

<https://bluevirginia.us/2018/08/breaking-late-friday-night-fercs-trump-appointees-reject-rehearing-request-for-ACP-on-2-1-vote-powerful-dissent-by-obama-appointed-commissioner-lafleur-other-trump-appointee-abstains-but-agrees>

Regional/Mountain Valley Pipeline, other

Head of Jefferson National Forest temporarily reassigned as pipeline controversy continues

- The Roanoke Times – 8/15/18

https://www.roanoke.com/news/local/head-of-jefferson-national-forest-temporarily-reassigned-as-pipeline-controversy/article_da188adb-1fbc-53db-8e4b-41bab5ed5b77.html

Beth LeMaster, deputy forest supervisor in a Roanoke County office that serves as the combined headquarters for the George Washington and Jefferson National Forests, will take over Timm's responsibilities on an interim basis.

With Construction Temporarily Halted, Help Step Up Pressure Against the Atlantic Coast and Mountain Valley Pipelines

- Oil Change International – 8/14/18

<http://priceofoil.org/2018/08/14/with-construction-temporarily-halted-help-step-up-pressure-against-the-atlantic-coast-and-mountain-valley-pipelines/>

Federal agency approves part of MVP plan for stabilization measures

- NBC 10 News – 8/13/18

<https://www.wsls.com/news/virginia/federal-agency-approves-part-of-mvp-plan-for-stabilization-measures>

A letter from the Federal Energy Regulatory Commission Friday gave MVP more freedom to work on stabilization measures. The agency said it's important for the company to secure the sites and manage erosion controls.

Hileman: State water board should suspend MVP's permit

- The Roanoke Times – 8/12/18

https://www.roanoke.com/opinion/commentary/hileman-state-water-board-should-suspend-mvp-s-permit/article_f8b78ce0-45aa-58b3-8c68-bd2ac47b00a6.html

MVP will cross hundreds of streams in Virginia, and the impacts to only four streams during the early stages of construction represent 62 percent of the total estimated temporary impacts to intermittent streams in the project area. This is unacceptable.

Regulators change the rules to ease pipeline approval

- WV Gazette-Mail – 8/10/18

https://www.wvgazettemail.com/news/wv-troubled-transition/regulators-change-the-rules-to-ease-pipeline-approval/article_34473938-91e4-556e-bc36-12ecb4a1fb4e.html

Over the past two years, federal and state agencies tasked with enforcing the nation's environmental laws have moved repeatedly to clear roadblocks and expedite construction of the Mountain Valley Pipeline, even changing the rules at times to ease the project's approvals.

Big Picture:

EIA Data Undermines Trump's Love Affair With Coal & Nuclear

- Clean Technica – 8/13/18

<https://cleantechnica.com/2018/08/13/eia-data-undermines-trumps-love-affair-with-coal-nuclear/>

"Nuclear and coal simply can't compete with renewable energy," said Tim Judson, Executive Director of the Nuclear Information and Resource Service.

FERC Deadlocked After Powelson Departure, Pipeline Approvals Likely to Slow

- Inside Sources – 8/13/18

<http://www.insidesources.com/ferc-deadlocked-after-powelson-departure-pipeline-approvals-likely-to-slow/>

How long will it take to confirm a replacement? FERC commissioners require a Senate confirmation vote, but the body is already woefully behind in its confirmation duties.

Court orders Trump admin to study new route's impacts

- E&E News: EnergyWire – 8/16/18

https://www.abralliance.org/wp-content/uploads/2018/08/Court-orders-Trump-admin-to-study-new-routes-impacts-EE-Energywire_20180816.pdf

The U.S. District Court for the District of Montana ruled that the State Department must conduct a fresh analysis of the contentious oil pipeline's new route through Nebraska.

Here's How to Cut Greenhouse Gas Emissions Without Taxing Them

- The New York Times – 8/14/18

<https://www.nytimes.com/2018/08/14/opinion/how-to-cut-greenhouse-gas-emissions-without-taxing-them.html>

Discussion is overdue for a National Clean Energy Standard.