



## *ABRA Update #195 – August 31, 2018*

### **Timeline of Defiance: Analysis Shows How ACP Games the System**

An analysis released today by the Dominion Pipeline Monitoring Coalition (DPMC) vividly shows how the Atlantic Coast Pipeline, LLC (ACP, LLC) is deceiving regulators and others, in defiance of the stop work order for the Atlantic Coast Pipeline (ACP) project issued August 10 by the Federal Energy Regulatory Commission (FERC). DPMC report details a timeline of relevant regulatory actions affecting the ACP over the recent months, accompanied by photographic evidence gathered by the Pipeline Air Force, a component of ABRA's Compliance Surveillance Initiative.

For instance, on August 6 the U.S. Court of Appeals Fourth Circuit vacated two critical permits for the ACP, prompting FERC to issue on August 10 a stop work order for the entire project. However, as the photographs below show, ACP, LLC continued moving materials on to the pipeline right of way, in obvious defiance of FERC's instructions. The complete DPMC analysis is available [here](#).



August 5, 2018



August 12, 2018



August 22, 2018

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## **MVP Authorized by FERC & Court to Resume Construction**

The Mountain Valley Pipeline (MVP) project has been granted permission by the Federal Energy Regulatory Commission (FERC) to resume construction activity. In an [August 29 letter from Tom Turpin](#), Director of the Office of Energy Projects at FERC to the Mountain Valley Pipeline, LLC, it was stated that FERC “has determined that the protection of the environment along the Project’s right-of-way is best served by modifying the Stop Work Order issued on August 3, 2018.” Turpin goes on to say that “in consultation with staff, I have determined that protection of the environment along the Project’s right-of-way across non-federal land is best served by completing construction and restoration activities as quickly as possible.” The authorization for resumed construction activity does not apply to not apply to federally owned lands for which MVP has not yet obtained appropriate authority to construct.

While the FERC action was staff-initiated, as was the original stop work order, the modification of the order prompted the two Democrat members of FERC – Commissioners Cheryl LaFleur and Richard Glick – to issue a [statement, also on August 29, taking exception to the staff action](#):

*We have significant concerns with today’s decision to allow construction to resume while required right-of-way and temporary use permits remain outstanding.*

*In response to recent court decisions, Commission staff has acted within its delegated authority to address the impact of those court decisions on post-certificate pipeline activities, as it did today. However, given the increasing complexity of such issues, we believe the Commission should revisit this practice. In the future, when a court remands or vacates a required federal authorization following the issuance of a notice to proceed, we believe the decision regarding whether and how to proceed with the pipeline should be made by the Commission rather than its staff. Ultimately, it is the Commission’s responsibility to ensure the project is in the public interest.*

FERC currently has two Republicans and Democrats in the wake of Commissioner Powelson’s resignation earlier this month. Thus, a Commission action to either affirm or reject the staff action is unlikely.

In a related development late on [August 29, the Fourth Circuit Court of Appeals issued an order lifting a stay](#) of the U.S. Army Court of Engineers’ National Permit 12 for the MVP regarding four river crossings in West Virginia.

## **New Study Is Released on Climate Change Litigation Trends**

Court cases that seek regulatory action based on climate change considerations have a better chance of success if they are based on renewable energy or energy efficiency arguments, according to a new study released this month by George Washington University. [The study, “Strategies in and outcomes of climate change litigation,”](#) analyzed 873 domestic climate change lawsuits that were filed between 1990 and 2016.

The study found that the most common climate issues brought to court involved coal-fired power plants and other air quality concerns. Litigants asking the courts for increased regulations to curb emissions from coal-fired power plants more frequently lost than won. The lead author points out, though, that “litigants who want to address climate change often win renewable energy and energy efficiency cases. The courts favored the pro-regulatory positions in these kinds of cases by a ratio of 2.6 to 1.” The study advises that “efforts to affect climate policy should consider these trends and outcomes.”

## ***In the News:***

### **Local/Atlantic Coast Pipeline**

#### **Atlantic Coast Water Crossing Permit Holds Up as Court Denies Enviro Challenge**

- Natural Gas Intelligence – 8/28/18

<http://www.naturalgasintel.com/articles/115586-atlantic-coast-water-crossing-permit-holds-up-as-court-denies-enviro-challenge>

Attack on ACP's NWP 12 permit doesn't hold up in the 4<sup>th</sup> Circuit.

#### **In Virginia, governor and appointees at odds over gas pipelines**

- The Washington Post – 8/28/18

[https://www.washingtonpost.com/local/virginia-politics/in-virginia-governor-and-appointees-at-odds-over-gas-pipelines/2018/08/28/b3faebco-aaf6-11e8-b1da-ff7faa680710\\_story.html?utm\\_term=.5dc6d77708b6](https://www.washingtonpost.com/local/virginia-politics/in-virginia-governor-and-appointees-at-odds-over-gas-pipelines/2018/08/28/b3faebco-aaf6-11e8-b1da-ff7faa680710_story.html?utm_term=.5dc6d77708b6)

Northam casts himself as an environmentalist, but he has drawn criticism from other Democrats for failing to oppose the pipeline projects.

Related:

- <http://bluevirginia.us/2018/08/finally-its-final-governor-northams-advisory-council-calls-for-moratorium-on-atlantic-coast-and-mountain-valley-pipelines>

#### **Virginia's high court passes on chance to stand up to Dominion for conflicts of interest on the Atlantic Coast Pipeline**

- Virginia Mercury – 8/24/18

<https://www.virginiamercury.com/2018/08/24/virginias-high-court-passes-on-chance-to-stand-up-to-dominion-for-conflicts-of-interest-on-the-atlantic-coast-pipeline/>

On Aug. 9, the Virginia Supreme Court joined the governor, the State Corporation Commission and most of the General Assembly in refusing to question the sweetheart deal under which Dominion Energy Virginia committed its captive ratepayers to purchasing billions of dollars of fracked gas shipping capacity on the Atlantic Coast Pipeline, of which Dominion itself is the largest partner.

#### **State scientists confirm more sightings of endangered bumblebee along pipeline route**

- The Roanoke Times – 8/23/18

[https://www.roanoke.com/news/virginia/state-scientists-confirm-more-sightings-of-endangered-bumblebee-along-pipeline/article\\_dd447d5f-b897-5622-932f-df6c960bc7eb.html](https://www.roanoke.com/news/virginia/state-scientists-confirm-more-sightings-of-endangered-bumblebee-along-pipeline/article_dd447d5f-b897-5622-932f-df6c960bc7eb.html)

State scientists have found 20 more examples of an endangered species of bumblebee near the path of the Atlantic Coast Pipeline in the Allegheny Highlands, a finding that federal energy regulators say they will consider in new consultation with the U.S. Fish and Wildlife Service.

#### **Editorial: On pipelines, Northam finds middle ground hard to hold**

- The Virginian-Pilot – 8/26/18

[https://pilotonline.com/opinion/editorial/article\\_b8307eb4-a7b1-11e8-bcf7-031eacfe071b.html](https://pilotonline.com/opinion/editorial/article_b8307eb4-a7b1-11e8-bcf7-031eacfe071b.html)

### **Regional/Mountain Valley Pipeline, other**

#### **Work on Mountain Valley Pipeline allowed to resume**

- The Roanoke Times – 8/29/18

[https://www.roanoke.com/news/local/work-on-mountain-valley-pipeline-allowed-to-resume/article\\_db970614-c261-59b3-8c7b-42ad0dcdcf58.html](https://www.roanoke.com/news/local/work-on-mountain-valley-pipeline-allowed-to-resume/article_db970614-c261-59b3-8c7b-42ad0dcdcf58.html)

The only exceptions are for a 3.5-mile stretch of the pipeline through the national forest — for which Mountain Valley still must obtain a new permit from the Forest Service — and a segment in Braxton County, West Virginia, that also crosses federal lands.

Related:

- <https://www.virginiamercury.com/2018/08/29/ferc-allows-work-to-resume-on-mountain-valley-pipeline-two-commissioners-voice-concerns-about-decision/>

## Two visions in conflict

- Virginia Mercury – 8/31/18

<https://www.virginiamercury.com/2018/08/31/two-visions-in-conflict/>

Environmentally friendly pipelines...an existential threat in sea level rise. Governor Northam is talking out of both sides of his mouth. Nothing of value is coming out.

## Pipeline work at odds with tourism?

- The Inter-Mountain – 8/27/18

<http://www.theintermountain.com/opinion/letters-to-the-editor/2018/08/pipeline-work-at-odds-with-tourism/>

## All-volunteer groups patrol construction of gas pipeline projects in Virginia, North Carolina

- Think Progress – 8/24/18

<https://thinkprogress.org/volunteer-citizen-groups-monitor-pipeline-projects-in-virginia-north-carolina-e075ac7c98b4/>

Citizen groups fill regulatory gaps created by industry-friendly state and federal agencies.

## Natural Gas Industry Again Beats a Tiny West Virginia County That Wanted to Control Its Destiny

- ProPublica – 8/30/18

<https://www.propublica.org/article/natural-gas-industry-beats-a-tiny-west-virginia-county>

A federal judge ruled that Fayette County must allow a natural gas compressor station, saying the federal Natural Gas Act takes precedence over local zoning rules.

## Big Picture:

### Agencies play tug of war over pipeline protection

- E&E News – 8/23/18

<https://www.eenews.net/stories/1060094769>

Natural gas pipeline companies are being pulled in three different directions as federal agencies mull how to handle new security threats to an increasingly vital resource.

### Dems question FERC over chief of staff role in coal, nuke bailout

- Utility Dive – 8/23/18

<https://www.utilitydive.com/news/dems-question-ferc-over-chief-of-staff-role-in-coal-nuke-bailout/530799/>

Related:

- <https://www.rtoinsider.com/ferc-doe-kevin-mcintyre-anthony-pugliese-98597/>

### Climate change could render many of Earth's ecosystems unrecognizable

- The Washington Post – 8/30/18

[https://www.washingtonpost.com/science/2018/08/30/climate-change-could-render-many-earths-ecosystems-unrecognizable/?utm\\_term=.18d6b9bae914](https://www.washingtonpost.com/science/2018/08/30/climate-change-could-render-many-earths-ecosystems-unrecognizable/?utm_term=.18d6b9bae914)

After the end of the last ice age – as sea levels rose, glaciers receded and global average temperatures soared as much as seven degrees Celsius – the Earth's ecosystems were utterly transformed. It's about to happen again, only sped up immeasurably.

Related:

- <https://www.theatlantic.com/science/archive/2018/08/how-climate-change-could-remake-every-biome-on-earth/569038/>

### Why World Worries About Russia's Natural Gas Pipeline

- Bloomberg Businessweek – 8/27/18

<https://www.bloomberg.com/news/articles/2018-08-27/why-world-worries-about-russia-s-natural-gas-pipeline-quicktake>

A planned new natural-gas pipeline into Europe from Russia is shaking up geopolitics.

Related:

- <https://www.forbes.com/sites/kenrapoza/2018/08/22/russias-gazprom-is-worlds-biggest-energy-investor/#308600133553>

## **FERC Approves 49% Increase in Mountaineer XPress Pipeline Rates**

- Natural Gas Intelligence – 8/28/18

<http://www.naturalgasintel.com/articles/115587-ferc-approves-49-increase-in-mountaineer-xpress-pipeline-rates>

Should we expect the same from ACP and MVP as their costs rise? So much for “lowering costs for all Virginians”...Ruby!

## **California kicks its climate change fight into overdrive while Trump looks the other way**

- Business Insider – 8/30/18

<https://www.businessinsider.com/california-electricity-to-come-from-carbon-free-sources-by-2045-2018-8>

Administration continues its mission to gut environmental regulation and energy advances. California tells Trump where to stick it.