

Dominion Energy Transmission, Inc.
707 East Main Street, Richmond, VA 23219



August 7, 2018

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Atlantic Coast Pipeline, LLC, Docket Nos. CP15-554-000 and CP15-554-001
Supplemental Information Regarding Judicial Decision and Crossing of the Blue
Ridge Parkway**

Dear Secretary Bose:

By Order dated October 13, 2017, the Federal Energy Regulatory Commission (Commission or FERC) authorized Atlantic Coast Pipeline, LLC (Atlantic) to construct and operate certain facilities that comprise the Atlantic Coast Pipeline Project (ACP). *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042 (2017).

Dominion Energy Transmission, Inc. (DETI), on behalf of Atlantic, previously informed the Commission that the United States Court of Appeals for the Fourth Circuit had issued an order vacating the Incidental Take Statement (ITS) for ACP. Yesterday, August 6, 2018, the Court issued its written opinion explaining that order.¹ The decision is fully consistent with DETI's prior explanation to the Commission with respect to the ITS, explaining that the ITS is simply a safe harbor allowing "takes" of listed species and not affecting the Biological Opinion provided by the U.S. Fish and Wildlife Service to the Commission. *See* Accession No. 20180626-5232. Thus, the Court's opinion has not changed anything with respect to the implications of the vacatur of the ITS.

In its opinion, the Court of Appeals did also vacate the right-of-way permit granted by the National Park Service ("NPS") for ACP's crossing under the Blue Ridge Parkway. Given the general trajectory of the ACP route between West Virginia and southern Virginia (northwest to southeast), and need to cross the Blue Ridge Mountains (which trend northeast to southwest), it is not feasible to avoid crossing the Blue Ridge Parkway and associated NPS lands that follow along the Blue Ridge Mountains. Approximately 0.1 mile of the proposed ACP will cross under the Blue Ridge Parkway, which is under the jurisdiction of the NPS. Atlantic has proposed to employ horizontal directional drilling under the Parkway and to install a prefabricated segment of pipeline through the hole beneath the Parkway without affecting the Parkway surface.² The NPS granted the right-of-way permit on December 12, 2017, after determining on November 20, 2017, that a Categorical Exclusion from analysis under the National Environmental Policy Act ("NEPA") is justified because there would be no significant resource impacts from the pipeline crossing the Parkway.

The Court of Appeals held that the NPS did not adequately explain its basis for granting the right of-way and, therefore, vacated the permit. Atlantic expects that the NPS will promptly re-issue the permit, with the appropriate explanation to address the concerns raised by the Court. Ample evidence to support the requisite finding that the permit is consistent with applicable statutory purposes has previously been provided to the NPS. The Visual Impact Analysis submitted by Atlantic to the NPS on

¹ *Sierra Club, et al. v. U.S. Department of the Interior, et al.*, 4th Cir. Case Nos. 18-1082 and 18-1083, available at: <http://www.ca4.uscourts.gov/opinions/181082.P.pdf>

² *See* Final Environmental Impact Statement (July 2017), Accession No. 20170721-4000, at Section 3.3.43 and Section 4.8.9.1 at pages 4-460 to 4-464.

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June 6, 2017 and to FERC on June 9, 2017 (Accession No. 20170609-5196) provided an in-depth and comprehensive viewshed assessment of the Blue Ridge Parkway project crossing. As a result, the NPS granted the right-of-way permit. Atlantic does not expect the NPS to require any additional information or engage in any further public proceedings before taking action on remand. In addition, no NEPA review (or related evaluation of alternatives) is required, as the NPS finding of a Categorical Exclusion is unaffected by the Court's decision.

Given the very specific guidance from the Court's opinion, Atlantic is confident that the NPS will quickly issue a new permit resolving the Court's concerns. Furthermore, there is no reason to believe that the NPS will consider any change in the location of ACP's crossing under the Blue Ridge Parkway. Therefore, the Court's decision does not present any prospect of potential change in the ACP route. Finally, the decision does not affect, and is wholly unrelated to, on-going construction activities³. Atlantic has not yet requested a Notice to Proceed to commence construction under the Blue Ridge Parkway (*i.e.*, on lands under the jurisdiction of the NPS). Based on this status, construction can continue as previously approved by FERC.

Atlantic believes that this supplemental filing provides all of the necessary information concerning the implications of the vacatur of its permit for the crossing of the Blue Ridge Parkway. Of course, should the Commission require any additional information in this regarding, Atlantic will respond promptly to any such requests.

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Respectfully submitted,

/s/ J. Patrick Nevins

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cc: Mr. Kevin Bowman, FERC

³ Atlantic notes that the project components upstream of its Long Run interconnection with Columbia Gas Transmission in Randolph County, West Virginia also provide incremental access to natural gas supplies from Dominion South Point, for customers on that system. Construction downstream of its Buckingham (Virginia) interconnection with Transcontinental Gas Pipe Line will also serve as needed natural gas delivery infrastructure to the energy markets in Hampton Roads and eastern North Carolina.

Document Content(s)

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