

The Recorder

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Feds halt pipeline

- FERC denies permit review, but leaves room for an appeal
- Isolated sections of ACP might do for now, Dominion says

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The Allegheny-Blue Ridge Alliance CSI program is conducting routine surveillance flights of the Atlantic Coast Pipeline route. The photos show the same location on Point Mountain in Randolph County, W.Va. The Aug. 5 photo (left) was taken the day before the court ruling vacating ACP permits. The Aug. 12 photo (right) was taken two days after the Federal Energy Regulatory Commission issued a stop work order on the project. These are two of thousands of photos taken by the CSI to document compliance with construction requirements and legal restrictions. (Photos courtesy Pipeline CSI)

MONTEREY — Another late Friday whirlwind of decisions came down regarding Dominion’s proposed Atlantic Coast Pipeline last week.

Friday, Aug. 10, the Federal Energy Regulatory Commission issued a stop work order on the ACP and, on the same night, rejected petitions to rehear its Oct.13, 2017 decision to license the project.

In related news, Dominion confirmed the industrial zoned McCray property on Davis Run Road has been secured for use as a contractor yard more than 20 miles north of the pipeline route. Earlier stormwater management plans for yards in Jack Mountain Village and the Neil property in McDowell were withdrawn. Plans for another contractor yard were up for review in western Augusta County..

The United States Court of Appeals Fourth Circuit on Aug. 6 threw out the permit allowing ACP construction across the Blue Ridge Parkway and explained the reasoning behind its May decision tossing the incidental take statement issued by the U.S. Fish and Wildlife Service.



Above and below: This is the ACP contractor yard about five miles south of Frost, W.Va., between Route 92 and Knapps Creek. These photos were taken by the CSI on Aug. 12. (Photos courtesy Pipeline CSI)



“In light of this development, (the pipeline) has not obtained the rights of way and temporary use permits from the NPS needed for ACP to cross certain federally owned lands and lacks an incidental take statement for the project,” Terry Turpin, director of FERC office of energy projects said in a letter to Dominion Energy Transmission Inc.

“There is no reason to believe that the NPS, as the land managing agency, will not be able to comply with the court’s instructions and to ultimately issue a new right-of-way grant that satisfies the court’s requirements, or that FWS will not be able to issue an incidental take statement that does likewise. However, commission staff cannot predict when NPS or FWS may act or whether NPS will ultimately approve the same route.

“Should NPS authorize an alternative crossing location, Atlantic may need to revise substantial portions of the ACP route across non-federal or federal lands, possibly requiring further authorizations and environmental review. Accordingly, allowing continued construction poses the risk of expending substantial resources and substantially disturbing the environment by constructing facilities that ultimately might have to be relocated or abandoned,” Turpin said.

The notice was similar to the stopwork order that had recently been issued to the separate Mountain Valley Pipeline project.

Dominion asks to proceed

Dominion responded quickly Friday night, saying it was already working with key agencies to resolve issues in the stop work order, and separate project sections not impacted by the court ruling could become viable gas infrastructure.

“We will respond with strong evidence demonstrating the independent public need to proceed with construction of the supply header project, as well as portions of the Atlantic Coast Pipeline in West Virginia, eastern Virginia and North Carolina,” pipeline spokesman Aaron Ruby of Dominion said in a prepared statement.

“These portions of the project will serve home heating and manufacturing needs in eastern Virginia and North Carolina and are not affected by recent court rulings ... The Atlantic Coast Pipeline is critical to the economic and environmental future of our region.”

Mathew Bley, director of gas certificates for Dominion Energy Transmission, explained in a letter to FERC Monday that independent segments unaffected by the court ruling could serve as gas transportation infrastructure by themselves.

“Natural gas received via (supply header project in West Virginia), at Marts, can be redelivered by the planned ACP pipeline to its Long Run delivery point into Columbia Gas Transmission Corporation LLC, in Randolph County, West Virginia ... The Long Run interconnection thus would provide a substantial, viable, competitive supply option for existing Columbia Transmission shippers, even if other portions of ACP were not constructed. Subject to avoidance of any areas affected by the vacatur of the ITS ... Atlantic should be allowed to proceed with construction of this useful component of the ACP,” he said.

“The ACP infrastructure from its Buckingham, Va., interconnection with Transcontinental Gas Pipe Line Company LLC (Transco) to points downstream could be used for gas deliveries to markets in both North Carolina and eastern Virginia. These markets are chronically constrained in terms of natural gas supply. Independent of ACP’s proposed construction of pipeline upstream of the Buckingham – including areas affected by the Aug. 6 court order – ACP could receive up to 885,000 Dt/day from Transco for service on the ACP main line and the Virginia lateral,” Bley explained.

“Depending on the availability of supply and relative operating pressures on the Transco system, ACP expects that its physical receipts at Buckingham could exceed 885,000 Dt/day. Although this approach would not provide the full benefit of access to the DETI system and the liquid South Point market hub (which customers expect upon completion of the ACP), this portion of the ACP infrastructure ... would serve to redeliver gas to Hampton Roads and eastern North Carolina markets, where interstate pipeline capacity is either already fully subscribed, or nonexistent,” Bley said.

FERC commissioners Cheryl LaFleur and Richard Glick stated on Friday they did not find the project in the public interest. Still, FERC decided in a 2-1 vote to reject petitions to rehear its decision to grant a certificate of public convenience and necessity.

LaFleur dissented, and Glick abstained.

The resignation of Robert Powelson as a FERC member became effective Aug. 4, leaving four commissioners including Glick, LaFleur, chair Kevin McIntyre and Neil Chatterjee.

FERC's reasoning

Allegheny Blue Ridge Alliance executive director Lew Freeman sifted through the postings related to FERC's rejection for a rehearing, and listed some key points, including LaFleur's opening paragraph of her dissent; she said, "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. My consideration of the ACP project was influenced by my consideration of the certificate application of the Mountain Valley Pipeline project, which was decided on the same day as the ACP project."

LaFleur continued, "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:

- "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 decision, which vacated the National Park Service's federal authorization allowing the ACP project to cross the Blue Ridge Parkway;
- "I disagree with the treatment of climate impacts; and
- "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."

In Glick's explanation of why he did not participate in the vote, he said it was "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."

He added, "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.

Freeman cited the following excerpts from FERC's Aug. 10 decision addressing some of the issues petitioners raised:

- Introducing new evidence – “We find that there is no material issue of fact that we cannot resolve on the basis of the written record in the proceeding. Therefore, we will reject Shenandoah Valley Network’s attempt to submit new evidence at the rehearing stage.”
- Rate of return for ACP – “We disagree that the treatment of ROE or the resulting recourse rates in these proceedings are flawed. Because the establishment of recourse rates is based on estimates, the Commission’s general policy is to accept the pipeline’s cost components if they are reasonable and are consistent with Commission policy.”
- Whether the draft EIS satisfies NEPA requirements – “NEPA does not require a complete plan be actually formulated at the onset, but only that the proper procedures be followed for ensuring that the environmental consequences have been fairly evaluated. When considering the Commission’s ‘evaluation of scientific data within its expertise,’ the courts afford the Commission ‘an extreme degree of deference.’”
- Regarding the need for the project – “The precedent agreements are significant evidence of demand.”
- Considering renewable energy alternatives – “The Final EIS explained that it excluded renewable energy and energy efficiency alternatives because renewable energy and energy efficiency measures do not transport natural gas. Because these energy technologies would not feasibly achieve the projects’ aims, they were not considered or evaluated further. Petitioners contend this approach is impermissibly restrictive, but for purposes of NEPA, an agency may take into account an applicant’s needs and goals when assessing alternatives, so long as it does not limit the alternatives to only those that would adopt the applicant’s proposal.”
- Capacity of other pipelines to meet need – “The Final EIS analyzed the availability of capacity on other pipelines to serve as alternatives to the ACP Project, and concluded that they do not presently serve as practical alternatives to the project ... The final EIS considered transportation on existing Columbia, Transco, and East Tennessee Systems and on new pipeline projects — Mountain Valley Pipeline and Columbia’s WB Xpress Project — but found that these alternatives do not have available capacity and are not environmentally preferable due to necessary modifications.”
- Collocation of the ACP and MVP – “The commission need not analyze ‘the environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or ... impractical or ineffective.’ With respect to the collocation alternative, as described in the final EIS and certificate order, there is insufficient space along the narrow ridgelines to accommodate two parallel 42-inch-diameter pipelines. As a result, this alternative is technically infeasible and would not offer a significant advantage. The final EIS also determined that merging ACP Pipeline and the Mountain Valley Pipeline into one pipeline system was infeasible.”

- Crossing the national forests and Blue Ridge Parkway – “The final EIS eliminated routes that would completely avoid National Forest land, including the Blue Ridge Parkway, because such routes would not be environmentally preferable. Routing the ACP Project to the south of the Monongahela National Forest and George Washington National Forest would increase the route by 43 miles. In general, shorter pipeline routes have fewer environmental impacts than, and are environmentally preferable to, longer routes.”
- Potential extension of ACP into South Carolina – “To date, neither Atlantic nor any of its affiliate owners have proposed a pipeline extending from the ACP Project terminus at Lumberton, N.C., into South Carolina. Without a proposal, the commission cannot determine if the projects are related to each other closely enough to be considered a single course of action.”
- Threat of seismic activity and landslides – Petitioners argue “that the final EIS was inadequate because the analysis relating to water impacts from steep slope construction remains ongoing. We disagree. The final EIS specifically finds that constructing the pipelines in steep terrain or high landslide incidence areas could increase the potential for landslides to occur, including areas outside National Forest lands. The mitigation measures described above attempt to minimize these effects.”
- Consideration of impact on historic resources — Petitioners conclude that because of inadequate consultation, “the commission’s process did not sufficiently identify potential resources, evaluate their historic significance, assess whether the undertaking will adversely affect them, and then evaluate ways to avoid, minimize, or mitigate adverse effects. We disagree. The final EIS described the public outreach for the project, including applicant-sponsored open houses, public scoping meetings, and receipt of more than 8,000 written comments.”
- Impacts to streams and wetlands along steep slopes — Petitioners argue the final EIS “failed to adequately assess or mitigate impacts to streams and wetlands from construction along steep slopes.” They contend such construction “will increase sedimentation from erosion and landslides and result in long-term adverse effects on pristine headwaters, wetlands, and brook trout habitat. The final EIS concluded that surface water impacts from construction along steep slopes on Forest Service land would be avoided or minimized through adherence to the mitigation requirements discussed above.”
- Impacts of access roads — Petitioners argue the final EIS violated the National Environmental Policy Act because it failed to analyze the impacts from 99 acres of access roads on water resources. It is not clear which roads petitioners are referring to, but the final EIS fully analyzed impacts from all access roads.”
- Impacts on karst and groundwater – Petitioners state the final EIS “failed to adequately assess construction impacts on karst and related groundwater resources. Specifically, it contends that the commission’s conclusion that there would not be a significant impact on aquifers or other groundwater resources was not supported by meaningful assessment of potential impacts to water quality from construction through fragile karst terrain. We disagree. Atlantic conducted an extensive analysis of geologic conditions in the project area, consulted with the applicable state agencies and local water management districts, and used these efforts to prepare the

aforementioned plans to avoid, minimize, and mitigate project-related impacts on karst resources. Atlantic was required to submit the requested fracture and dye trace study before the commencement of construction, which it did as part of the Oct. 18, 2017 Implementation Plan. The study confirmed that the protocols in the Karst Mitigation Plan should be followed to limit the potential for groundwater to be impacted by project construction.”

- Environmental justice – “We disagree that the final EIS contained a flawed environmental justice analysis. However, before examining that question, we observe that Shenandoah Valley Network is mistaken that Executive Order 12898 applies to the commission. The Executive Order states that ‘independent agencies are requested to comply with the provisions of this order.’ Shenandoah Valley Network argues that the final EIS failed to make use of the limited data it compiled. Despite the information about minority and low-income groups in the final EIS, Shenandoah Valley Network states that the final EIS and certificate order failed to ‘consider the environmental injustice of allowing a massive, new industrial project to cut through so many communities with high percentages of low- income families, people of color, and American Indians.’”