



ABRA Update #200 – October 4, 2018

Fourth Circuit Hears Challenges to Forest Service and 401 Cases

A three-judge panel of the Fourth Circuit of the U.S. Court of Appeals in Richmond heard arguments last Friday, September 28, on two important cases challenging permits granted to the Atlantic Coast Pipeline (ACP). The first case challenged the December 13 decision by the Virginia State Water Control Board to grant a water quality certificate for the ACP (pursuant to requirements of Section 401 of the federal Clean Water Act). The second case challenged the decisions of the U.S. Forest Service (NFS) to amend the Forest Plans of the Monongahela National Forest (MNF) and the George Washington National Forest (GWNF) and to accordingly issue a Special Use Permit for the ACP to cross the two forests. The plaintiffs in both cases were a group of ABRA member organizations and others that were jointly represented by Appalachian Mountain Advocates (Appalmad) and the Southern Environmental Law Center (SELC). An article about the challenges appeared in the [September 21 ABRA Update](#) and includes links to each brief filed with the Court.

In the Forest Service case, the presiding judge noted that the Forest Service had been challenging ACP's ability to prove it could build the pipeline across steep mountain terrain without causing serious erosion problems. He noted that the record of correspondence and emails preceding the NFS decision indicated that a satisfactory response from the company had not been forthcoming. Then, suddenly in July 2017, the NFS issued a draft amendment to the Forest Plans of the MNF and GWNF and proceeded to approve the requested Special Use Permit. The judge inquired repeatedly of the attorney representing the NFS what the circumstances were that caused the Forest Service to change course. The attorney responded evasively, prompting the judge re-ask the question repeatedly, finally to thundering: "Who's running the train station? Is it the private company?" It was a riveting moment. For more, see the two *Richmond Times Dispatch* articles by Michael Martz, linked below in In the News.

A recording of last Friday's oral arguments is available on the Court's website. For the Forest Service case, click [here](#); for the 401 case, click [here](#).

MVP Has Another Permit Struck Down

The U.S. Army Corps of Engineers Huntington District's Nationwide Permit 12 for the Mountain Valley Pipeline (MVP) was vacated on October 2 by the Fourth Circuit Court of Appeals. At this time, the court's action only applies in West Virginia.

The case had been argued the previous Friday, September 28. The Court said that it agreed with the petitioners' claim that "in issuing its verification, the Corps improperly imposed one condition—requiring use of a 'dry cut' method for constructing four river crossings – in lieu

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of a special condition imposed by the State of West Virginia, J.A. 23 – that that individual stream crossings must be completed in a continuous, progressive manner within 72 hours.”

MVP informed the Federal Energy Regulatory Commission (FERC) on October 3 that:

Before the Court issued its order, Mountain Valley had commenced the process of crossing two streams in the Huntington District. Mountain Valley had installed flumes in the streams but had not yet started trenching. Mountain Valley has suspended the trenching work for these streams and is in the process of removing the flumes and completing any required stream bank restoration.

Also, on [October 3, the plaintiffs in the case wrote FERC](#), arguing that the agency’s October 13, 2017 certificate for the MVP “is no longer satisfied, requiring the Commission to take action to stop further construction activities” for the entire route, in WV and VA.

Augusta County Board Tables – Again – Proposal for ACP Storage Yard

The Augusta County, VA Board of Zoning (BZA) tabled the potential Dominion Pipeline storage yard yet again during its Thursday, October 4 meeting. Only three of the five members of the BZA were present. This is the fifth time and second location Dominion Energy has proposed a special use permit for a staging yard to build the Atlantic Coast Pipeline. The matter will be taken up again at the Board’s November meeting. For more, see the News Leader article below in In the News.

Trump to Nominate Former McGuireWoods Partner to FERC Vacancy

Bernard McNamee, Executive Director of the Office of Policy for the U.S. Department of Energy, is to be nominated by President Trump to be a member of the Federal Energy Regulatory Commission, it was announced October 3 by the White House. He would fill the seat vacated by Commissioner Robert Powelson, who resigned from FERC in August to accept a position in the private sector.

Mr. McNamee was previously with the offices of the Attorneys General of both Virginia and Texas, served as a policy advisor to U.S. Sen. Ted Cruz and is a former partner with McGuireWoods, the Richmond-based law firm that includes Dominion Energy among its most prominent clients. He received his law degree from the University of Virginia.

According to Mr. McNamee’s Linked-In profile, while with McGuireWoods he “represented electric and natural gas clients before state public utility, as well as providing advice related to major policy issues facing the energy industry.”

In reporting on the announcement of McNamee’s being named by President Trump, the publication *Utility Dive* noted: “During his time there, McNamee [wrote an Earth Day op-ed for The Hill](#) extolling the virtues of fossil fuels, writing that ‘some suggest that we can replace fossil fuels with renewable resources to meet our needs, but they never explain how.’”

Virginia Energy Plan 2018 Unveiled

Virginia Governor Ralph Northam released on October 2 the 2018 Virginia Energy Plan. In his announcement release, the plan was described as providing “a strategic vision for the Commonwealth’s energy policy over the next 10 years. With a focus on modernizing the electric grid and promoting innovative technologies, the plan sets goals for renewable energy generation, energy efficiency, and electric vehicles.” The Plan is available [here](#).

In the News:

Local/Atlantic Coast Pipeline

Forest Service emails raise questions about pipeline approval, catch judge's eye

- Richmond Times-Dispatch – 10/1/18

https://www.richmond.com/news/plus/forest-service-emails-raise-questions-about-pipeline-approval-catch-judge/article_4dfid3c1-c66f-5ecb-a232-d151e1686ec9.html

Asks who is in charge of the process...government agencies responsible for protecting the nations waters and forests? Or energy companies that profit from their exploitation?

Appeals court judge takes aim at U.S. Forest Service role in approving pipeline

- Richmond Times-Dispatch – 9/28/18

https://www.richmond.com/news/plus/appeals-court-judge-takes-aim-at-u-s-forest-service/article_19c9b338-1288-576d-b249-344679d060db.html

Judge questions 'sudden change of standards' that occurred shortly after 2016 election.

Woman traces pipeline path on horseback

- The Recorder – 10/4/18

<https://www.abralliance.org/wp-content/uploads/2018/10/Woman-traces-pipeline-path-on-horseback-Recorder20181004.pdf>

This ride, she hopes, will help call attention to the potential damage the pipeline would cause. "It's a good way to help remind people about it," Murphy said.

Augusta County zoning board tables Dominion Pipeline storage yard, yet again

- News Leader – 10/4/18

<https://www.newsleader.com/story/news/local/2018/10/04/augusta-county-zoning-board-tables-dominion-pipeline-storage-yard-yet-again/1519173002/>

This is the fifth time and second location Dominion Energy has proposed a special use permit for a staging yard to build the Atlantic Coast Pipeline.

Augusta Farm Bureau opposes pipeline project

- The Recorder – 10/4/18

<https://www.abralliance.org/wp-content/uploads/2018/10/Augusta-Farm-Bureau-opposes-pipeline-project-Recorder20181004.pdf>

Resolution noted improper use of eminent domain and damage to "groundwater, crop production, livestock health, public safety, our agricultural heritage, and common natural treasures.?"

Valley Conservation Council names new director

- The Recorder – 10/4/18

<https://www.abralliance.org/wp-content/uploads/2018/10/Valley-Conservation-Council-names-new-director-Recorder20181004.pdf>

Conservation Council is a nonprofit organization working to protect the farms, forests, open spaces, and cultural heritage of the greater Shenandoah Valley region.

Regional/Mountain Valley Pipeline, other

Another Court Ruling Against a West Virginia Pipeline, Then Another Effort to Change the Rules

- ProPublica – 10/4/18

<https://www.propublica.org/article/court-ruling-against-west-virginia-mountain-valley-pipeline-another-effort-to-change-rules>

Once again, the state of West Virginia is bending over backwards to protect (and "expedite the construction of") Mountain Valley Pipeline. Why isn't it protecting its citizens? Their rights? Their property Their water?

BREAKING: Enviro Groups' Letter to FERC Demands Stop-Work Order on Mountain Valley Pipeline; Video Shows Work Continues...

- Blue Virginia – 10/3/18

<https://bluevirginia.us/2018/10/breaking-enviro-groups-letter-to-ferc-demands-stop-work-order-on-mountain-valley-pipeline-video-shows-work-continues>

Judges question 'rewriting' of rules in pipeline cases

- WV Gazette-Mail – 9/28/18

https://www.wvgazettemail.com/news/judges-question-rewriting-of-rules-in-pipeline-cases/article_937c65f0-c3b6-5cb5-bde0-9ffe9907056e.html

On Friday, judges repeatedly asked why the Army Corps would allow the DEP to rewrite rules, and appeared surprised that construction has continued. Characterized the situation as a "bait and switch".

US district court denies challenge to eminent domain use for ACP, MVP pipelines

- S&P Global – 10/1/18

<https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/100118-us-district-court-denies-challenge-to-eminent-domain-use-for-ACP-MVP-pipelines>

The plaintiffs failed to qualify for an exception to that avenue that is allowed for constitutional challenges directed at underlying agency authority, the court said.

Data centers to Dominion: Don't use us to justify more power plants

- Energy News Network – 9/28/18

<https://energynews.us/2018/09/28/southeast/data-centers-to-dominion-dont-use-us-to-justify-more-power-plants/>

Dominion's build-out plans have no basis in the reality of load growth, or the needs of the companies that may create it.

Northam's energy plan met with acclaim, but how much will it push the envelope?

- Virginia Mercury – 10/3/18

<https://www.virginiamercury.com/2018/10/03/northams-energy-plan-met-with-acclaim-but-how-much-will-it-push-the-envelope/>

Related:

- https://pilotonline.com/news/local/environment/article_4d041816-c67f-11e8-bc72-df0c51d48d6f.html

Big Picture:

Climate scientists are struggling to find the right words for very bad news

- The Washington Post – 10/3/18

https://www.washingtonpost.com/energy-environment/2018/10/03/climate-scientists-are-struggling-find-right-words-very-bad-news/?noredirect=on&utm_term=.bed14f5435a2

It's going to be VERY tough to restrict global warming to 1.5 degrees C. This report will tell each country just HOW tough.

Trump's FERC Pick Could Tip Balance in Favor of Coal Bailout

- Bloomberg – 10/3/18

https://www.bloomberg.com/news/articles/2018-10-03/trump-s-ferc-pick-could-tip-balance-in-favor-of-coal-bailout?utm_source=google&utm_medium=bd&cmpId=google

Related:

- <https://www.greentechmedia.com/articles/read/key-backer-of-trumps-coal-and-nuclear-bailout-effort-is-nominated-to-ferc#gs.OrSVqQ4>

Utilities have a problem: the public wants 100% renewable energy, and quick

- Vox – 10/2/18

<https://www.vox.com/energy-and-environment/2018/9/14/17853884/utilities-renewable-energy-100-percent-public-opinion>

Renewables are a public opinion juggernaut. Being against them is no longer an option. The industry's best and only hope is to slow down the stampede a bit (and that's what they plan to try).

Oil Companies Say They're Going Green. Here's What that Would Mean for the Fight Against Climate Change

- Time – 10/4/18

<http://time.com/5415263/president-trump-oil-companies-carbon-capture-climate-change/>

Though it's unlikely that MORE oil is the solution to the shrinking carbon budget, practical carbon storage experience is sorely needed

Buoyant gas industry may be blindsided by renewables

- Reuters – 9/20/18

<https://www.reuters.com/article/us-gas-industry-gastech/buoyant-gas-industry-may-be-blindsided-by-renewables-idUSKCN1MooP3>

There are public policies in place around the world and technology developments that fundamentally challenge the gas industry outlook.

Deloitte: Renewable energy price declines to continue

- IEEFA – 9/14/18

<http://ieefa.org/deloitte-renewable-energy-price-declines-to-continue/>

Lots of interesting stuff in the report below.

Related:

- <https://www2.deloitte.com/insights/us/en/industry/power-and-utilities/global-renewable-energy-trends.html>