

## SOUTHERN ENVIRONMENTAL LAW CENTER

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October 26, 2018

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

**Re: Atlantic's Request for Notice to Proceed with Construction in  
Virginia under Atlantic Coast Pipeline Dockets CP15-554-000  
& CP15-554-001**

Dear Secretary Bose:

On October 19, 2018, Dominion Energy Transmission, Inc. ("DETI"), on behalf of Atlantic Coast Pipeline, LLC ("Atlantic"), filed a request for a Notice to Proceed to commence construction in Virginia. Letter from Matthew R. Bley, Dir., Gas Transmission Certificates, DETI, to Kimberly D. Bose, Sec'y, FERC (Oct. 19, 2018) (eLibrary No. 20181022-5004). The Commission should deny the request and issue a stop-work order.

As we explained in our letters dated September 25, 2018 (eLibrary No. 20180925-5028) and October 5, 2018 (eLibrary No. 20181005-5186), Atlantic seeks to proceed with construction activities for the Atlantic Coast Pipeline ("ACP") despite lacking an effective authorization from the United States Forest Service for the project. On September 24, 2018, the United States Court of Appeals for the Fourth Circuit issued an order staying implementation of the Special Use Permit and Record of Decision issued by the Forest Service for the ACP, pending appeal. *Cowpasture River Pres. Ass'n v. Forest Serv.*, No. 18-1144 (4th Cir. Sept. 24, 2018). As a result, for the duration of the stay, Atlantic does not meet Environmental Condition 10 of the Commission's Certificate of Public Convenience and Necessity issued to Atlantic in October 2017, which requires that Atlantic "receive[] all applicable authorizations required under federal law" before it can "receive written authorization" from the Commission to proceed with construction. *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at 137 (Oct. 13, 2017).

The Fourth Circuit has made clear that under Environmental Condition 10, Atlantic must have *all* applicable authorizations in hand prior to proceeding with construction—not merely those that are applicable to a particular segment of the pipeline. *See Sierra Club v. U.S. Dep’t of the Interior*, 899 F.3d 260, 284 n.11 (4th Cir. 2018) (cautioning that absent valid authorizations from the U.S. Fish and Wildlife Service (“FWS”) and National Park Service (“NPS”), “[Atlantic], *should it continue to proceed with construction*, would violate FERC’s certificate of public convenience and necessity.”) (emphasis added).

Just two months ago, after the Fourth Circuit vacated the FWS and NPS authorizations, the Commission directed Atlantic to immediately cease all construction activity along all portions of the ACP, with the exception of any measures deemed necessary by appropriate federal agencies to ensure the stabilization of work areas. Letter from Terry L. Turpin, Dir., Office of Energy Projects, FERC, to Matthew R. Bley, Dir., Gas Transmission Certificates, DETI (Aug. 10, 2018) (eLibrary No. 20180810-4011). In issuing a stop-work order, the Commission recognized that

[s]hould 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.

*Id.* at 1-2.

Substantially similar circumstances are present here. The Fourth Circuit has not issued a final decision in *Cowpasture*. Should the Court vacate the Forest Service right-of-way that it has stayed since September 24, alternative routes for the pipeline across or around national forest lands may be required. Permitting construction to proceed while the Forest Service’s authorization is on hold risks wasting resources and unnecessarily disturbing the environment by constructing pipeline segments that may ultimately have to be removed or abandoned.

In light of the Fourth Circuit’s stay of the Forest Service right of way, the Commission should deny Atlantic’s October 19, 2018 request to proceed with construction in Virginia. The Commission should issue a stop-work order halting all construction activities on the ACP until Atlantic has an effective authorization from the Forest Service.

Sincerely,

/s/ Gregory Buppert

Gregory Buppert  
SOUTHERN ENVIRONMENTAL LAW CENTER

*On behalf of Cowpasture River Preservation Association, Friends of Buckingham, Highlanders for Responsible Development, Piedmont Environmental Council, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, Virginia Wilderness Committee, Sound Rivers, Inc., Virginia Wilderness Committee, and Winyah Rivers Foundation*

/s/ Benjamin A. Lockett

Benjamin A. Lockett  
APPALACHIAN MOUNTAIN ADVOCATES

*On behalf of Appalachian Voices, Chesapeake Climate Action Network, Sierra Club, and Wild Virginia, Inc.*

/s/ Jon A. Mueller

Jon A. Mueller  
CHESAPEAKE BAY FOUNDATION, INC.

*On behalf of Chesapeake Bay Foundation, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that I have on October 26, 2018, caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Gregory Buppert  
Gregory Buppert  
SOUTHERN ENVIRONMENTAL LAW CENTER

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