



## ABRA Update #208 – December 6, 2018

### Fourth Circuit is Asked to Stay ACP’s Fish and Wildlife Permit

A motion to stay the U.S. Fish and Wildlife’s (FWS) latest Biological Opinion and Incidental Take Statement for the Atlantic Coast Pipeline (ACP) was filed November 30 with the Fourth Circuit Court of Appeals by the Southern Environmental Law Center (SELC) on behalf of its clients: Defenders of Wildlife, Sierra Club and The Virginia Wilderness Committee. The FWS’s original Opinion and Take Statement on the project was [struck down by the Fourth Circuit in an opinion issued August 6, 2018](#). FWS issued a revised Opinion and Take Statement was issued September 11 and a stop work order that had been in effect since the Fourth Circuit’s decision was lifted by the Federal Energy Regulatory Commission on September 17.

In its [petition](#) to the Court, SELC pointed out that four endangered species would be adversely affected by ACP construction: 1) Indiana bats habitats in several designated Appalachian Recovery Units along the route; 2) clubshell mussels adversely impacted by sedimentation-inducing activities in their watershed; 3) the Rusty-patched bumble bee as the result of tree felling in Bath County, VA; and the Madison cave isopod due to access road construction in Bath County. The petition further argues that the FWS, as it did in approving the first Biological Opinion and Incidental Take Statement for the ACP rushed to judgment as the result of political pressure from the Department of Interior to accommodate the project, without conducting a thorough analysis as required by law regarding the impacts upon the cited endangered species.

Concluding, the petition proclaims: “The public interest is not harmed by a delay in construction. Even if Atlantic can make a showing of economic harm, that economic harm does not equate to harm to the public interest.”

### Air Board Urged to Reject ACP’s Late Efforts on Compressor Station Vote

The Virginia Air Pollution Control Board has been asked to reject eleventh-hour attempt by Dominion Energy to insert new conditions and provisions into the pending air quality permit for the project’s compressor station in Buckingham County without input from the public. [A December 3 letter from the Southern Environmental Law Center](#) to Board Chair Richard Langford and David Paylor, Director of the Department of Environmental Quality, states:

Dominion proposed on November 9 that the Board condition the permit on a memorandum of understanding between Dominion and the Dominion-backed Union Hill Community Development Corporation regarding a \$5.1 million investment. But whether such a condition would satisfy the requirements of §10.1-1307(E) is a question the public must be permitted to weigh in on. Indeed, we believe it would not. The governing statute does not permit site-suitability concerns—like the risk here of

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disproportionate harm to the historic, African-American community of Union Hill—to be swept away with the promise of money to unrelated community development projects. Further, to allow Dominion to unilaterally amend a proposed permit after the close of the comment period would invite abuse of the process and frustrate meaningful public participation.

The Air Board is scheduled to meet Monday, December 10 to vote on the proposed air permit. The forthcoming vote has generated much controversy due to the replacement of two sitting members who had participated in the Board’s November 8 and 9 deliberations on the permit (see the [November 30 Update](#) and related articles below in In the News for more on this. Details on the December 10 meeting are [here](#).

## **U.S. Senate Confirms Fifth Member of FERC**

Bernard McNamee, Executive Director of the Office of Policy for the U.S. Department of Energy, was confirmed December 6 to be a member of the Federal Energy Regulatory Commission (FERC). His approval came on a 50-49 vote, with all Democrats voting against the nomination. The action restores FERC to full strength, with a 3-2 Republican majority.

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.’”

## **Nelson County Turns Down ACP Floodplain Variance Request**

The Nelson County Board of Zoning Appeals denied on December 3, by a 3-2 vote, four of Dominion Energy’s applications for the variances to the County’s flood plain ordinance needed to construct the Atlantic Coast Pipeline across flood plains in Nelson. The other seven of the original eleven applications were dismissed in January 2018, and ACP will have to submit new applications for them.

The [Nelson County Zoning Ordinance](#) specifically includes “Structures or facilities that produce, use, store, or transport highly volatile, flammable, explosive, toxic, and/or water-reactive materials” in the list of “critical facilities [that] are prohibited from being constructed or operated within a SFHA [Special Floodplain Hazard Area] unless a Variance is granted.”

For more, see the [Friends of Nelson County press release](#).

## **Virginia to Establish a Methane Leakage Work Group**

The Virginia Department of Environmental Quality (DEQ) announced December 3 that it is establishing an ad hoc work group of stakeholders to develop a framework for limiting methane leakage from natural gas infrastructure. The group will support DEQ in its collection and evaluation of data to inform the regulation development process. Persons wishing to join this group, must notify the department contact listed below in writing by December 21, 2018. For details, click [here](#).

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

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

#### **Northam's struggle to explain air board move suggests it's exactly what it appears to be**

- Virginia Mercury – 12/5/18

<https://www.virginiamercury.com/2018/12/05/northams-struggle-to-explain-air-board-move-suggests-its-exactly-what-it-appears-to-be/?fbclid=IwAR3FuweVApnqa6JLYEYugdGRse7REm4s-D RNkYoOf-wqjSfXgCJ8rE-YU>

Botched messaging aside, in general, the simplest explanation is the most likely.

Related:

- [https://www.roanoke.com/opinion/commentary/hileman-northam-should-reinstate-air-board-members/article\\_ef72a88a-7b7e-5db0-a438-4851d3d5d7ba.html?fbclid=IwAR1YY4N1QHl6Gx4pvPFrj87oLdNowxeLGn4vRarhTEFRGUbeaehCWk mPbHQ](https://www.roanoke.com/opinion/commentary/hileman-northam-should-reinstate-air-board-members/article_ef72a88a-7b7e-5db0-a438-4851d3d5d7ba.html?fbclid=IwAR1YY4N1QHl6Gx4pvPFrj87oLdNowxeLGn4vRarhTEFRGUbeaehCWk mPbHQ)
- <https://bluevirginia.us/2018/12/letter-to-new-virginia-air-board-member-we-ask-that-you-refrain-from-completing-the-swearing-in-process-before-the-december-10th-meeting>

#### **Atlantic Coast Pipeline hits another speed bump in Nelson County**

- The News & Advance – 12/5/18

[https://www.newsadvance.com/news/local/atlantic-coast-pipeline-hits-another-speed-bump-in-nelson-county/article\\_9519b837-928b-5905-b38f-c04a35d2ebbf.html](https://www.newsadvance.com/news/local/atlantic-coast-pipeline-hits-another-speed-bump-in-nelson-county/article_9519b837-928b-5905-b38f-c04a35d2ebbf.html)

The board's denial in a 3-2 vote Monday means construction of the pipeline in certain areas of Nelson County will be on hold until ACP can gain the necessary approval to build through designated floodplain areas.

#### **Historic Bath site rebukes pipeline plans**

- The Recorder – 12/6/18

[https://www.abralliance.org/wp-content/uploads/2018/12/Historic-Bath-site-rebukes-pipeline-plans-Recorder\\_20181206.pdf](https://www.abralliance.org/wp-content/uploads/2018/12/Historic-Bath-site-rebukes-pipeline-plans-Recorder_20181206.pdf)

#### **Atlantic Coast Pipeline storage yard will be in Fishersville, avoids need for review**

- News Leader – 12/3/18

<https://www.newsleader.com/story/news/2018/12/03/atlantic-coast-pipeline-storage-yard-augusta-county-wilson-trucking-secured-bypasses-review/2193422002/>

#### **\$5M in pipeline funds to support new Albemarle park**

- The Daily Progress – 12/1/18

[https://www.dailyprogress.com/news/local/county/m-in-pipeline-funds-to-support-new-albemarle-park/article\\_725ac1aa-f5c8-11e8-8e90-5f85d0904384.html](https://www.dailyprogress.com/news/local/county/m-in-pipeline-funds-to-support-new-albemarle-park/article_725ac1aa-f5c8-11e8-8e90-5f85d0904384.html)

Dominion continues to throw money around the region in a blatant attempt to quiet areas with vocal opposition to its unnecessary and destructive project.

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

#### **Congress considers changing law for pipeline crossing of Appalachian Trail, Blue Ridge Parkway**

- KVPI 6 News – 12/3/18

[https://www.kpvi.com/news/national\\_news/congress-considers-changing-law-for-pipeline-crossing-of-appalachian-trail/article\\_4618ea31-e7c1-5150-a8af-8fbd21bbf65f.html](https://www.kpvi.com/news/national_news/congress-considers-changing-law-for-pipeline-crossing-of-appalachian-trail/article_4618ea31-e7c1-5150-a8af-8fbd21bbf65f.html)

Hidden away in the omnibus spending bill is a little treat for Dominion energy.

#### **Mountaineer Xpress Pipeline Faces Erosion Control Violations**

- Storm Water Solutions – 12/4/18

<https://www.estormwater.com/sediment-control/mountaineer-xpress-pipeline-faces-erosion-control-violations>

Columbia Gas Transmission has been fined \$122,350 by the West Virginia Department of Environmental Protection (DEP) for a lack of sediment and erosion controls along the Mountaineer XPress Pipeline.

## **Rutherford Institute Asks Supreme Court to Look at Lawsuit Regarding Pipeline Construction**

- NBC 29 News – 12/4/18

<http://www.nbc29.com/story/39587550/rutherford-institute-asks-supreme-court-to-look-at-lawsuit-regarding-pipeline-construction>

## **Big Picture:**

### **Greenhouse Gas Emissions Accelerate Like a ‘Speeding Freight Train’ in 2018**

- The New York Times – 12/5/18

<https://www.nytimes.com/2018/12/05/climate/greenhouse-gas-emissions-2018.html>

Greenhouse gas emissions worldwide are growing at an accelerating pace this year, researchers said Wednesday, putting the world on track to face some of the most severe consequences of global warming sooner than expected.

### **UPDATE: Senate Confirms McNamee to FERC**

- RTO Insider – 12/6/18

<https://www.rtoinsider.com/bernard-mcnamee-senate-ferc-commissioner-107157/>

The U.S. Senate voted 50-49 on Thursday to confirm Bernard McNamee as a FERC commissioner, restoring the commission to full strength and Republicans’ 3-2 majority.

Related:

- <https://www.greentechmedia.com/articles/read/mcnamee-ferc-challenge-emerges-to-his-role-in-coal-nuclear-bailout#gs.=HrIrG4>

### **‘A kind of dark realism’: Why the climate change problem is starting to look too big to solve**

- The Washington Post – 12/4/18

[https://www.washingtonpost.com/national/health-science/a-kind-of-dark-realism-why-the-climate-change-problem-is-starting-to-look-too-big-to-solve/2018/12/03/378e49e4-e75d-11e8-a939-9469f1166f9d\\_story.html](https://www.washingtonpost.com/national/health-science/a-kind-of-dark-realism-why-the-climate-change-problem-is-starting-to-look-too-big-to-solve/2018/12/03/378e49e4-e75d-11e8-a939-9469f1166f9d_story.html)

The world has waited so long that preventing disruptive climate change requires action “unprecedented in scale.”

### **Homeowners along gas pipelines in Lebanon, Berks counties shocked to find threats of liens in mail**

- Lancaster Online – 12/6/18

[https://lancasteronline.com/news/local/homeowners-along-gas-pipelines-in-lebanon-berks-counties-shocked-to/article\\_74f02e4e-f8cc-11e8-a5c2-d324914e8c6f.html](https://lancasteronline.com/news/local/homeowners-along-gas-pipelines-in-lebanon-berks-counties-shocked-to/article_74f02e4e-f8cc-11e8-a5c2-d324914e8c6f.html)

Landowners who granted easements, even those who sought “qualified” legal advice, may be in for an even ruder awakening than that from trucks and heavy equipment in their yard.

### **Plunging Prices Mean Building New Renewable Energy Is Cheaper Than Running Existing Coal**

- Forbes – 12/3/18

<https://www.forbes.com/sites/energyinnovation/2018/12/03/plunging-prices-mean-building-new-renewable-energy-is-cheaper-than-running-existing-coal/#3cbb7c0731f3>

Across the U.S., renewable energy is beating coal on cost: The price to build new wind and solar has fallen below the cost of running existing coal-fired power plants in Red and Blue states.

### **Clean energy technologies threaten to overwhelm the grid. Here’s how it can adapt.**

- Vox – 12/3/18

<https://www.vox.com/energy-and-environment/2018/11/30/17868620/renewable-energy-power-grid-architecture>

Unless old systems are reconceived and redesigned, they could end up slowing down, and increasing the cost of, the transition to clean electricity and hampering the fight against climate change.