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Shutdown of pipeline project sought

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BY JOHN BRUCE • STAFF WRITER

CHARLOTTESVILLE — The Southern Environmental Law Center petitioned the Federal Energy Regulatory Commission Dec. 13 to revoke licensing and issue a stop-work order for the proposed Atlantic Coast Pipeline.

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

SELC attorney Gregory Buppert told media outlets the real story was that Dominion influenced the Trump administration to pressure the U.S. Forest Service to greatly reduce its scrutiny.

“The U.S. Court of Appeals for the Fourth Circuit vacated the Special Use Permit and Record of Decision issued by the U.S. Forest Service for the ACP that would allow the pipeline to cross the Monongahela and George Washington National Forests and the Appalachian National Scenic Trail,” Buppert said in a letter to FERC. “The court found that the agency violated the National Forest Management Act, the National Environmental Policy Act, and the Mineral Leasing Act.”

Buppert pressed FERC to lift the project’s licensing. “The commission must revoke the Certificate of Public Convenience and Necessity for the ACP and immediately issue a stop-work order for the entire project. Crucially, the court held that the Forest Service does not have statutory authority to authorize the pipeline to cross the Appalachian Trail. As a result, under federal law, Atlantic Coast Pipeline LLC cannot obtain authorization from federal agencies to cross the trail as proposed. Thus, the commission’s certificate approves a project that cannot be constructed in compliance with federal law. Further, the proposed Appalachian Trail crossing is a linchpin in the commission’s alternatives analysis — almost every alternative considered in the final EIS includes this crossing point,” Buppert stated.

“Further, the commission must issue a formal stop-work order, effective immediately, halting all construction activities because the court’s decision means that Atlantic continues to be out of compliance with a mandatory condition of its Certificate of Public Convenience and Necessity. Environmental Condition 10 requires that Atlantic ‘receive all applicable authorizations required under federal law’ before it can ‘receive written authorization’ to commence construction.

“Atlantic’s recent voluntary suspension of construction activities may be lifted by the applicant at any time and does not relieve the commission of its obligations to comply with the Natural Gas Act and to enforce the terms of its certificate. As the commission is aware, the Forest Service Special Use Permit and Record of Decision are just the latest agency authorizations for the ACP to have been vacated, stayed, or suspended over the past six weeks,” Buppert noted.

The earlier authorizations lifted include:

- On Nov. 7, the Fourth Circuit stayed the U.S. Army Corps of Engineers’ Huntington District Nationwide Permit 12 verification.
- On Nov. 20, the Corps suspended the Nationwide Permit 12 verifications for the Pittsburgh, Norfolk, and Wilmington Districts.
- On Dec. 7, 2018, the Fourth Circuit stayed implementation of the U.S. Fish and Wildlife Service’s biological opinion and incidental take statement for the ACP.

“Following the Fourth Circuit’s vacatur of the U.S. Fish and Wildlife Service and National Park Service permits for the ACP, the commission issued a stop-work order for the project on Aug. 10, 2018,” Buppert said. “A week earlier, the commission also recognized that the vacatur of a mandatory federal authorization requires a pipeline developer to cease all construction activities, issuing a stop-work order for the Mountain Valley Pipeline.

“Should the commission allow Atlantic to proceed with construction, it would risk constraining the Forest Service’s consideration of alternative routes as required by the Fourth Circuit’s decision. As the commission observed in its previous stop-work orders for the ACP and MVP, ‘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.’ As a result of today’s decision by the Fourth Circuit, the same is again true for the ACP. Accordingly, the commission must immediately issue a stop-work order for all aspects of the Atlantic Coast Pipeline due to its noncompliance with Environmental Condition 10, and revoke the project’s certificate because the project cannot be authorized as proposed under existing federal laws,” Buppert said.