

# SOUTHERN ENVIRONMENTAL LAW CENTER

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December 21, 2018

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

**Re: Response to Atlantic Coast Pipeline LLC's December 11, 2018  
Work in Critical Areas Plan and December 19, 2018 Interim  
Right-of-Way and Work Area Stabilization Plan.**

Dear Ms. Bose:

Please accept this response to Atlantic Coast Pipeline, LLC's ("Atlantic's") "Supplemental Information – Work in Critical Areas" letter (Dec. 11, 2018), eLibrary No. 20181211-5109, and "Interim Right-of-Way and Work Area Stabilization Plans" (Dec. 19, 2018), eLibrary No. 20181219-5240, submitted on behalf of the groups identified at the close of this letter ("Conservation Groups"). The Commission should require Atlantic to remove strung pipe from the Atlantic Coast Pipeline ("ACP") right-of-way rather than allow Atlantic to continue to install pipe along a route that is not authorized by law.

The Fourth Circuit's stay of the Fish and Wildlife Service's authorizations on December 7, 2018, which prompted Atlantic to voluntarily halt construction, was just one of many agency authorizations for the ACP to have been stayed, suspended, or vacated over the past three months. The Fourth Circuit stayed the U.S. Forest Service's Special Use Permit on September 24, 2018, *Cowpasture River Pres. Ass'n v. Forest Serv.*, No. 18-1144 (4th Cir. Sept. 24, 2018), and the U.S. Army Corps of Engineers' Huntington District Nationwide Permit 12 verification on November 7, 2018, *Sierra Club v. U.S. Army Corps of Eng'rs*, No. 18-2273 (4th Cir. Nov. 7, 2018). The Corps subsequently suspended the Nationwide Permit 12 verifications for the Pittsburgh, Norfolk, and Wilmington Districts on November 20, 2018. Dominion Energy Transmission, Letter to Kimberly D. Bose re Nationwide Permit 12 Verification Suspensions (Nov. 21, 2018), eLibrary No. 20181121-5094. On December 13, 2018, the Fourth Circuit vacated the Forest Service's Special Use Permit and Record of Decision, *Cowpasture River Pres. Ass'n v. Forest Serv.*, No. 18-1144 (4th Cir. Dec. 13, 2018). Crucially, in its *Cowpasture* opinion, the court held that the Forest Service

does not have statutory authority to authorize the pipeline to cross the Appalachian Trail. As a result, Atlantic cannot obtain authorization to cross the Appalachian Trail at the current location.

Despite lacking effective mandatory authorizations for the project since September, Atlantic has continued to proceed with stringing pipe along the right-of-way. The Commission should not now countenance the decision by Atlantic to proceed in the absence of key permits by allowing Atlantic to install the pipe it brought to the right-of-way at its own risk. The pipe should be removed to ensure compliance with applicable laws, and not furtherance of a predetermined route unauthorized by law. Atlantic must only be allowed to take those actions that are truly necessary to ensure the stabilization of the right-of-way and work areas.

Pipe installation is not necessary to stabilize a trench. Atlantic has provided stabilization techniques for areas where the trench is dug but pipe is not currently strung out on the right-of-way. Dominion Energy Transmission, Letter to Kimberly D. Bose re Interim Right-of-Way and Work Area Stabilization Plan (Dec. 19, 2018), eLibrary No. 20181219-5240. None of those techniques involved retrieving pipe from contractor yards and installing it in the trench. Fundamentally, Atlantic's assertion that such steps are "needed in order to achieve critical stabilization, environmental and cultural resource protection, and public safety" falls short because it assumes that any installed pipe will not have to be removed. Currently, Atlantic does not have effective authorizations from the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, or the U.S. Forest Service to construct its pipeline along its preferred route. Every additional step taken towards installing the pipeline risks additional damage associated with removing it.

Atlantic gambled and continued constructing its pipeline in the face of numerous stayed and suspended authorizations. Atlantic is now asking the Commission to endorse that decision by allowing Atlantic to install pipe strung out on the right-of-way under the pretense of "stabilization." The Commission should not accept this hollow justification and should order Atlantic to stop all such construction along the right-of-way. Conservation Groups understand that leaving pipe on the right-of-way may pose logistical and safety concerns. The answer to those concerns is straightforward: remove the pipe from the right-of-way.

Sincerely,

/s/ Gregory Buppert

Gregory Buppert  
SOUTHERN ENVIRONMENTAL LAW CENTER

*On behalf of 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*

/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 December 21, 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