



## ABRA Update #215 – February 1, 2019

### Rehearing Sought on Fourth Circuit Opinion on ACP Forest Service Permit

The Atlantic Coast Pipeline, LLC [filed on January 28 a petition with the Fourth Circuit Court of Appeals](#) asking that the Court grant rehearing en banc (before the full Fourth Circuit) on the successful challenge that a group of ABRA members made against the Forest Service permit for the Atlantic Coast Pipeline (ACP). A three-judge panel of the [Court vacated the Forest Service permit on December 13](#). If the rehearing request is granted, a new hearing would be scheduled before all fifteen judges of the Fourth Circuit. In the meantime, the finding of the three-judge panel vacating the Forest Service permit for the ACP remains in effect

The petition sharply criticizes the three-judge panel opinion. Some excerpts:

- Inventing procedural hurdles to stymie the project, the panel repeated an error that the Supreme Court has spent decades denouncing: The panel went “[b]eyond the APA’s minimum requirements ... ‘to impose upon [the] agency its own notion of which procedures are “best” or more likely to further some vague, undefined public good.’”
- The panel’s procedural holdings flout emphatic Supreme Court directives about judicial review of agency action. And any suggestion that Congress must authorize any pipeline to cross the 2,200-mile Appalachian Trail has dramatic implications and badly misconstrued the statutes governing National Forests, National Parks, and National Trails. Both sets of errors will have serious, widespread ramifications and merit rehearing en banc.
- . . . the possibility of a 2,200-mile barrier to pipeline construction from Maine to Georgia will chill infrastructure development and is even more problematic and erroneous. The panel’s holding is unfaithful to several statutes, bucks the longstanding practice of every involved agency, and will take scores of public and private landowners by surprise. There is simply no basis for erecting any such barrier between energy sources and energy consumers.

It is worth noting that the presiding judge of the three-judge panel that handed down the unanimous Forest Service permit decision that is being challenged by the petition is also the Chief Judge of the Fourth Circuit Court of Appeals. A decision on the ACP, LLC petition is not expected until later in February.

<p>Volunteer for ABRA’s Pipeline CSI Program</p> <p><b><u>Volunteer</u></b></p>	<p>Submit a report to the Pipeline CSI</p> <p><b><u>Report</u></b></p>	<p>Stay informed, like us on Facebook.</p> 	<p>Support ABRA financially</p> <p><b><u>GiveNow</u></b></p>
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## New Study Reinforces the Lack of Need for the ACP

A study released this week concludes that should the Atlantic Coast Pipeline ever be built its affiliated utility customers will have difficulty in convincing state regulators to pass on the project's costs to utility customers. In short, "the project does not represent good value to the ratepayer."

["The Vanishing Need for the Atlantic Coast Pipeline"](#) was released by Oil Change International and the Institute for Energy Economics and Financial Analysis. Among key findings in the study were:

- Six companies, all of whom are regulated utility affiliates of the pipeline's sponsors, have contracted for 96% of the pipeline's capacity.
- Atlantic Coast Pipeline, LLC will recover the costs of the pipeline through rates charged to the pipeline's customers. Given that the vast majority are regulated utilities, these costs will have to be approved by state utility regulators in Virginia and North Carolina.
- Electric utility subsidiaries of Duke and Dominion in Virginia and North Carolina have contracted for 68% of the pipeline's capacity. Yet, the argument by these utilities that they need new natural gas pipeline capacity has been significantly weakened since the ACP was first proposed.
- In its most recent long-term Integrated Resource Plan (IRP), four out of five of Dominion's modelled scenarios show no increase in natural gas consumption from 2019 through 2033.
- Dominion's 2018 IRP was rejected by Virginia state regulators, in part for overstating projections of future electricity demand. This implies that future natural gas consumption will likely be even less than forecasted in the IRP.
- The most recent IRPs of Duke Energy Progress and Duke Energy Carolinas show that previously planned natural gas plants have been delayed further into the future. We also find that Duke also has a history of overstating its forecast of electricity demand.
- Over the next decade, it is likely that the demand for natural gas in Virginia and North Carolina will be further eroded as renewable energy and storage technologies continue to rapidly decline in price.

The study recommends that investors ask hard questions of the ACP-LLC joint venture partners:

- What is the risk that state regulators will disapprove, or partially disapprove, recovery of project costs from ratepayers?
- Does the Virginia State Corporation Commission's rejection of Dominion's 2018 Integrated Resource Plan and its order that Dominion develop a revised load forecast change the perception of the risk that the SCC will not fully approve the pass-through of ACP project costs in rates?
- Without rate recovery, or with partial rate recovery, does the project still make sense?

## FERC Commissioner LaFleur Announces Intent to Not Seek Reappointment

Cheryl LaFleur, a member of the Federal Energy Regulatory Commission (FERC) who was the lone dissenter in the 2-1 approval of the Atlantic Coast Pipeline, announced January 31 that she will not seek reappointment to the Commission when her current term expires in June. In a Twitter announcement, commissioner LaFleur said:

Today I am announcing that I am no longer seeking a third term at FERC, and will be leaving the Commission later in 2019. While this is not the outcome I had hoped for, I feel very lucky to have served on FERC for more than eight years (and counting).

The President will be required to name a Democrat to replace her to keep the required political party balance in place. There currently are two Republicans and two Democrats on FERC, with one Republican seat vacant due to the recent death of Commissioner Kevin McIntyre.

### *In the News:*

## Local/Atlantic Coast Pipeline

### Atlantic Coast Pipeline on shakier ground as legal challenges add up

- Bay Journal – 1/25/19

[https://www.bayjournal.com/article/atlantic\\_coast\\_pipeline\\_on\\_shakier\\_ground\\_as\\_legal\\_challenges\\_add\\_up?fbclid=IwAR3fStf24QkutNABB\\_CMyhNiihKO\\_Cy\\_T3OZ1OWeTHULZEsiKv4oDfNAk](https://www.bayjournal.com/article/atlantic_coast_pipeline_on_shakier_ground_as_legal_challenges_add_up?fbclid=IwAR3fStf24QkutNABB_CMyhNiihKO_Cy_T3OZ1OWeTHULZEsiKv4oDfNAk)

### Neighbors report new sinkhole near pipeline path

- The Recorder – 1/31/19

[https://www.abralliance.org/wp-content/uploads/2019/01/Neighbors-report-new-sinkhole-near-pipeline-path-Recorder\\_20190131.pdf](https://www.abralliance.org/wp-content/uploads/2019/01/Neighbors-report-new-sinkhole-near-pipeline-path-Recorder_20190131.pdf)

GeoConcepts' karst report says bats are safe from construction-related pollution...says nothing about the impacts to aquifers used by local *humans* for drinking water.

### Pipeline politics? Maybe so, but NC still needs answers

- The Charlotte Observer – 1/28/19

<https://www.charlotteobserver.com/opinion/editorials/article225100760.html>

Politics are endlessly played in Raleigh, but that doesn't mean there are never legitimate questions for one side to ask the other.

### Bill limiting pipeline costs to ratepayers advancing

- Richmond Times-Dispatch – 1/29/19

[https://www.richmond.com/news/virginia/ap/bill-limiting-pipeline-costs-to-ratepayers-advancing/article\\_2ea381a1-a67f-5dfo-9645-46fb33f14702.html](https://www.richmond.com/news/virginia/ap/bill-limiting-pipeline-costs-to-ratepayers-advancing/article_2ea381a1-a67f-5dfo-9645-46fb33f14702.html)

The bill's sponsor, Republican Del. Lee Ware, said his goal isn't to block construction of the pipeline but to "ensure customers are only paying for capacity that the utilities actually need."

### Breathing while black: A Dominion compressor station would disadvantage a historically black community in Virginia

- The Washington Post – 1/25/19

[https://www.washingtonpost.com/opinions/breathing-while-black-a-dominion-compressor-station-would-disadvantage-a-historically-black-community-in-virginia/2019/01/25/cf88e056-1e76-11e9-8b59-0a28f2191131\\_story.html?utm\\_term=.71357440ecef](https://www.washingtonpost.com/opinions/breathing-while-black-a-dominion-compressor-station-would-disadvantage-a-historically-black-community-in-virginia/2019/01/25/cf88e056-1e76-11e9-8b59-0a28f2191131_story.html?utm_term=.71357440ecef)

Misleading claims by state officials undermine the basis for the Virginia State Air Pollution Control Board's Jan. 8 decision to approve a permit for a natural gas compressor station in Union Hill, a Buckingham County community that is populated mainly by African Americans.

## Regional/Mountain Valley Pipeline, other

### Environmental groups attack federal approval of Mountain Valley Pipeline

- The Roanoke Times – 1/28/19

[https://www.roanoke.com/business/news/environmental-groups-attack-federal-approval-of-mountain-valley-pipeline/article\\_679e95ac-c603-5c54-b72c-866a9b453dce.html?fbclid=IwARo-15vdsQoysctCjbyYcrDgtnHGtx5hGDih9WgasO6RDPpLSUedxC1F\\_L4A](https://www.roanoke.com/business/news/environmental-groups-attack-federal-approval-of-mountain-valley-pipeline/article_679e95ac-c603-5c54-b72c-866a9b453dce.html?fbclid=IwARo-15vdsQoysctCjbyYcrDgtnHGtx5hGDih9WgasO6RDPpLSUedxC1F_L4A)

The petition for review cited a lack of evidence for true public need, concerns over environmental degradation and a failure to calculate the climate impacts associated with the project as major problems with FERC's approval.

### Bernstein analysts say Mountain Valley, Atlantic Coast pipeline projects may not get finished

- IEEFA – 1/29/19

<http://ieefa.org/bernstein-analysts-say-mountain-valley-atlantic-coast-pipeline-projects-may-not-get-finished/>

Even with 10 Bcf/d of new pipeline capacity added in the past 15 months, Appalachia's pipeline buildout may be finished, putting the completion of late comers such as the EQM Midstream Partners LP-led Mountain Valley Pipeline LLC project and the Dominion Energy Inc.-led Atlantic Coast Pipeline LLC project in doubt. Related:

- <http://priceofoil.org/vanishing-need-atlantic-coast>

### Appalachian E&Ps Cutting Back Amid Flush Natural Gas Market, Shifting Expectations

- Natural Gas Intelligence – 1/28/19

<https://www.naturalgasintel.com/articles/117213-appalachian-eps-cutting-back-amid-flush-natural-gas-market-shifting-expectations>

The tenacious natural gas production growth that has characterized the Appalachian Basin over the last decade finally appears to be slowing as an epic pipeline buildout nears its conclusion, demand ebbs and operators realign their visions for the future.

Related: A shorter, lighter version...

- [https://www.abralliance.org/wp-content/uploads/2019/01/Drillers-Are-Easing-Off-the-Gas-Wall-Street-Journal-1-27-19.pdf?fbclid=IwAR3gOfTNolbj8ow2B-cL4uy\\_-J9lAPotFhxG1aFKKs\\_wT3-Ee59XcMOqjUo](https://www.abralliance.org/wp-content/uploads/2019/01/Drillers-Are-Easing-Off-the-Gas-Wall-Street-Journal-1-27-19.pdf?fbclid=IwAR3gOfTNolbj8ow2B-cL4uy_-J9lAPotFhxG1aFKKs_wT3-Ee59XcMOqjUo)

## Big Picture:

### America's Energy Future: What the Government Misses in Its Energy Outlook and Why It Matters

- Inside Climate News – 1/28/19

<https://insideclimatenews.org/news/28012019/eia-annual-energy-outlook-coal-renewable-wind-utility-analyst-projections-impact>

Utilities' plans and energy analysts' forecasts suggest the U.S. projections underplay coal's decline and renewable energy's rapid rise. That's a problem.

### FERC's LaFleur to step down

- Utility Dive – 1/31/19

<https://www.utilitydive.com/news/breaking-fercs-lafleur-to-step-down/547341/>

LaFleur was confirmed to FERC in 2010 after being tapped by President Barack Obama and was named acting chairman of the commission at the beginning of the Trump administration. In recent years, however, she had taken a harder line on accounting for the climate change impacts of natural gas infrastructure and clashed with Senate Minority Leader Chuck Schumer over electricity policy.

### Climate impacts are 'virtually unknowable' — FERC

- E&E News – 1/28/19

[https://www.eenews.net/stories/1060118701?fbclid=IwARoYLIIGG4hNFDK2ZEOmWmp21PVaTm73ALzL\\_Ciz2zJN1eUc\\_320n\\_5iU9J4](https://www.eenews.net/stories/1060118701?fbclid=IwARoYLIIGG4hNFDK2ZEOmWmp21PVaTm73ALzL_Ciz2zJN1eUc_320n_5iU9J4)

FERC's brief is a response to a lawsuit contesting the agency's decision last year to scale back its consideration of climate impacts in natural gas project approvals.

### **Polar Vortex set to test Midwest grids amid FERC resilience debate**

- Utility Dive – 1/30/19

<https://www.utilitydive.com/news/polar-vortex-set-to-test-midwest-grids-amid-ferc-resilience-debate/547231/>

Recent cold snaps have exposed vulnerabilities in gas delivery, coal plant operations and transmission lines, sparking market reforms at regional grid operators and grid resilience discussions at the Federal Energy Regulatory Commission (FERC).

### **Gas, Once a Bridge, Becomes a Roadblock**

- US News & World Report – 1/31/19

<https://www.usnews.com/news/national-news/articles/2019-01-31/natural-gas-once-a-clean-energy-bridge-threatens-to-become-a-roadblock>

The fuel has played an instrumental role in reducing the number of more heavily polluting coal plants. But dependence on natural gas caused U.S. emissions to spike last year.

### **2018 Was a Record Year for Corporate Clean Energy Contracts**

- GreenTech Media – 1/31/18

<https://www.greentechmedia.com/articles/read/reports-confirm-a-record-year-for-corporate-clean-energy-contracts#gs.aom5XJbF>

Companies bought up a lot more wind and solar in 2018.