

The Recorder

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Pipeline work proceeds despite court ordered stay

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BY JOHN BRUCE • STAFF WRITER

MONTEREY — Dominion Energy installed sections of the proposed Atlantic Coast Pipeline while claiming to stop work on the project, attorneys told the Federal Energy Regulatory Commission.

In a Feb. 15 letter, legal team members Gregory Buppert, Benjamin Luckett and Jon Mueller asked FERC to reverse approval of the pipeline company’s “interim right of way and work area stabilization plan.”

Buppert, an attorney for Southern Environmental Law Center, 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.

Luckett represents Appalachian Mountain Advocates on behalf of Appalachian Voices, Chesapeake Climate Action Network, Sierra Club, and Wild Virginia Inc.

Mueller represents the Chesapeake Bay Foundation.

Questionable practices

“We write to object to the commission’s recent approval of the Feb. 11, 2019 supplement to the Interim Right-of-Way and Work Area Stabilization Plan submitted by Atlantic Coast Pipeline LLC and Dominion Energy Transmission Inc., and to urge the commission to reconsider its authorization of additional construction.

“Under the guise of ‘stabilization,’ Atlantic and (Dominion) seek to advance construction of the Atlantic Coast Pipeline, even while they insist to the commission and the public that they have voluntarily halted construction in response to the Fourth Circuit’s Dec. 7, 2018 stay of implementation of the Biological Opinion and Incidental Take Statement issued by the United States Fish and Wildlife Service,” they said.

“The commission should not enable Atlantic and (Dominion) to move forward with construction while they lack mandatory federal authorizations.

The attorneys noted that on Dec. 7, 2018, Dominion informed FERC it had stopped construction on the entire project, except for stand-down activities needed for safety and those necessary to prevent detriment to the environment. Then, the company obtained FERC’s approval to install pipe, backfill trenches, and grade and stabilize rights of way in specified areas pursuant to an “Interim Right-of-Way and Work Area Stabilization Plan.”

“As part of its justification for these actions, Atlantic and (Dominion) represented to the commission that three areas in spread 2-1 had already been trenched, and that installation of strung pipe in those areas was necessary to stabilize the right of way. As Atlantic and (Dominion) now concede, that was not true; none of those three areas, totaling almost half a mile in length, had been trenched,” the attorneys said.

And now, they argued, in a Feb. 11, 2019 plan, the company has asked FERC to authorize trenching and installing pipe in those areas and six others, covering about 1.5 miles along the right of way.

“Trenching, however, is not necessary to stabilize a right of way; on the contrary, it is one of the most destabilizing activities involved in pipeline construction,” they said.

“The commission’s own final Environmental Impact Statement for the ACP is replete with examples of the environmental risks associated with trenching,” they argued.

Accordingly, the construction plans “call for installing additional erosion control devices once trenching begins and ‘minimizing the length of open trench at any given time.’ Far from a stabilization method, trenching actually demands further mitigation measures due to its destabilizing effects on a landscape,” they wrote. “It is thus understandable that Atlantic and (Dominion) do not claim that trenching and installing pipe in these areas is necessary for stabilization. In fact, Atlantic and (Dominion) make no attempt to claim that such activities are necessary at all — only that they ‘would help us to better maintain cathodic protection’ and that installing currently strung pipe would have ‘safety and viewshed advantages.’”

‘A good time’

To the extent Dominion is concerned about impacts to safety or the viewshed from strung pipe, they argued, Dominion should remove the pipe, not further destabilize the right of way by trenching and installation.

Furthermore, the attorneys said, Dominion’s contention that soil conditions “make it a good time for trenching and installing pipe,” should have no bearing on FERC’s determination as to whether further construction is warranted in light of the court’s stay of the U.S. Fish and Wildlife Service’s authorizations, especially since Dominion now lacks seven federal permits and authorizations “that are mandatory conditions of the commission’s certificate of public convenience and necessity ... We urge the commission to enforce the terms of its certificate and to reject (Dominion’s) request to proceed with construction that cannot be justified by environmental or safety concerns.”

Annual report

While Dominion Energy’s most recent annual report acknowledges various investment risks associated with the ACP, it does not specifically mention work stoppage or absence of authorizations.

“Several of the companies’ (Dominion and subsidiaries’) key projects are increasingly large-scale, complex and being constructed in constrained geographic areas or in difficult terrain, for example, the Atlantic Coast Pipeline Project,” the report says. “The advancement of the companies’ ventures is also affected by the interventions, litigation or other activities of stakeholder and advocacy groups, some of which oppose natural gas-related and energy infrastructure projects.

“For example, certain landowners and stakeholder groups oppose the Atlantic Coast Pipeline Project, which could impede construction activities or the acquisition of rights of way and other land rights on a timely basis or on acceptable terms ... The FERC order (authorizing the construction and operation of the project) has been appealed to the U.S. Court of Appeals for the Fourth Circuit, and the project remains subject to other pending federal and state approvals,” the investor-owned utility’s report states.