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Bath & Highland Counties – Virginia

SELC asks federal regulators to stop pipeline project

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BY JOHN BRUCE • STAFF WRITER

MONTEREY – Tuesday, the Southern Environmental Law Center on Tuesday asked the Federal Energy Regulatory Commission to withdraw authorization of the proposed Atlantic Coast Pipeline.

“Atlantic Coast Pipeline LLC now lacks effective versions of seven federal authorizations that are mandatory conditions of the commission’s certificate of public convenience and necessity issued for the ACP,” SELC attorney Greg Buppert said in a letter to FERC.

“Although Atlantic has voluntarily stopped construction on the ACP except for certain stand-down activities, we are concerned that unless the commission takes further action, Atlantic could resume construction at its discretion. Further, Atlantic’s voluntary cessation of work does not relieve the commission of its commitment, set forth in the certificate order, to authorize construction of the ACP only when Atlantic has all applicable authorizations required under federal law. Accordingly, we urge the commission to issue Atlantic a stop-work order halting all construction activities and to revoke or suspend all notices to proceed for the ACP,” Buppert said.

The revoked authorizations include:

- Nationwide Permit 12 Verification, U.S. Army Corps of Engineers’ Pittsburgh District — Suspended by the district on Nov. 20, 2018;
- Nationwide Permit 12 Verification, U.S. Army Corps of Engineers’ Norfolk District — Suspended by the Norfolk District also on Nov. 20, 2018;
- Nationwide Permit 12 Verification, U.S. Army Corps of Engineers’ Wilmington District — Suspended by the Wilmington District also on Nov. 20, 2018;

- Special Use Permit and Record of Decision, U.S. Forest Service — Vacated by the U.S. Fourth Circuit on Dec. 13, 2018;
- Biological Opinion and Incidental Take Permit, U.S. Fish and Wildlife Service — Stayed by the Fourth Circuit on Dec. 7, 2018;
- Right-of-Way and Construction Permits, National Park Service — Remanded by the Fourth Circuit on Jan. 23 to be vacated by the Park Service; and
- Nationwide Permit 12 Verification, U.S. Army Corps of Engineers' Huntington District — Vacated by the Fourth Circuit on Jan. 25.

Dominion seeks rehearing

A decision on an ACP petition filed Jan. 28 with the Fourth Circuit Court of Appeals is expected later this month, according to the Allegheny Blue Ridge Alliance Jan. 31 newsletter.

The pipeline company is asking the court to grant a rehearing before the full Fourth Circuit on the successful challenge that a group of ABRA members made against the U.S. Forest Service permit for the proposed Atlantic Coast Pipeline.

A three-judge panel of the court, presided over by the court of appeals chief justice, vacated the Forest Service permit on Dec. 13.

If the rehearing request is granted, a new “en banc” hearing would be scheduled. The term refers to a hearing before all 15 judges of the fourth circuit.

In the meantime, the order of Chief Judge Roger Gregory, James Wynn, and Stephanie Thacker revoking the Forest Service permit for the ACP remains in effect.

“A thorough review of the record leads to the necessary conclusion that the Forest Service abdicated its responsibility to preserve national forest resources,” the order stated. “This conclusion is particularly informed by the Forest Service’s serious environmental concerns that were suddenly, and mysteriously, assuaged in time to meet a private pipeline company’s deadlines.”

All construction has been halted, in part over a dispute regarding permits to cross the Appalachian Trail and national forests.

Construction in Virginia has not begun. Managing partner Dominion Energy hopes to resume construction in the third quarter of this year.

The pipeline company’s petition sharply criticizes the three-judge panel opinion. Some excerpts include:

- “Inventing procedural hurdles to stymie the project, the panel repeated an error that the Supreme Court has spent decades denouncing: The panel went beyond 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 (by all 15 judges).”
- “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.”

“There are multiple paths here,” Dominion CEO Thomas Farrell told analysts, during the company’s quarterly earnings call on Friday, according to the Sierra Club. “I know, people are focused understandably and justifiably on the en banc. But that’s not the only path here ... There is the potential if we don’t get the en banc or we lose the en banc ... we have the judicial path to Supreme Court.” Farrell said the company is working “quite vigorously” on a legislative path to address the invalidated permits, and has other options as well. “There are, as I mentioned, administrative paths that we have identified, but haven’t been able to fully pursue because of the government shutdown,” Farrell told analysts. “But the primary focus right now for us is our en banc proceeding.”

Originally announced in May 2014 as the Southeastern Reliability Project, the proposed pipeline route has grown in length from about 550 miles to 600 miles, and mushroomed in estimated cost from \$4 billion to \$7 billion.

In Richmond, legislation was moving forward to prevent Dominion from imposing ACP gas transportation costs on ratepayers. Sponsor Del. Lee Ware said his bill, HB 1718, was meant to make sure ratepayers only pay for fuel utilities really need. The bill was approved by the House on Tuesday, on a 57-40 vote.