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State tells feds condemnation lawsuit improper

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BY JOHN BRUCE • STAFF WRITER

WARM SPRINGS — Dominion Energy caught landowners and the Virginia Outdoors Foundation unaware by filing a land condemnation lawsuit involving an open-space conservation easement.

The VOF told the Federal Energy Regulatory Commission that Dominion affiliate Atlantic Coast Pipeline LLC wrongly filed the eminent domain lawsuit for a proposed pipeline access road.

In what VOF deputy director Martha Little described as an error, the pipeline company failed to consult VOF before attempting to route the access road across the conservation easement. The VOF easement was not included in the land swap of 10 conservation easements for Hayfields Farm in McDowell between Dominion and VOF.

“VOF strongly urges FERC to require that an alternative access road be found since this route has never been authorized by the VOF Board of Trustees,” Little said in an April 9 letter to FERC. “VOF would also argue that this access road was presented as an error in fact and should never have been included in the FERC certificate issued on Oct. 13, 2017. The fact that Atlantic is currently moving forward with condemnation proceedings without any consideration or decision from the VOF Board of Trustees is particularly alarming,” Little said.

“VOF’s easement interest and the (owners’) fee-simple interest in the property are separate and distinct,” VOF spokesman Jason McGarvey explained. “That’s why there are two deeds. Our FERC letter saying that our interest cannot be condemned refers specifically to the easement interest, not the fee-simple interest.”

The 190-acre conservation easement sits in the center of the endangered rusty patch bumblebee high potential zone designated by the Fish and Wildlife Service.

The easement is part of a farm belonging to Jeannette Robinson and members of her family. The farm was a land grant, and has been in her family for generations.

The proposed access road would follow the route of a U.S. Forest Service road, crossing the farm on top of Jack Mountain for a half-mile, and more than 800 feet of the conservation easement.

The entire portion of the easement crossed by the USFS road also lies within the Little Valley Slope Conservation Site established by the Virginia Department of Conservation and Recreation's Division of Natural Heritage.

Robinson was served with eminent domain lawsuit papers on Wednesday, April 3. The deadline to file an answer with the court is April 24.

'Incompetent or dishonest'

Dominion apparently ignored the conservation easement when researching deeds at the courthouse, and after being told about it repeatedly by Robinson and her husband, Gary, starting with scoping meetings when the new route through Bath County was announced.

"They're either totally incompetent or totally dishonest," Gary Robinson said. "They ignored the conservation easement."

"When they went to the courthouse, they found these parcels and owners," Mrs. Robinson said. "And recorded with the deed is the conservation easement."

She added that Dominion has consistently failed to send letters to or serve papers on some of the other family members who are co-owners of the property, despite the fact that they were provided with a list of all owners and their current addresses.

"Dominion has not been negotiating in good faith," Mr. Robinson said. "At this point, VOF has done their best to protect our easement. Both our family and VOF have been blind-sided by Dominion's actions. We both had been told by Dominion that they intended to go around our easement. They are simply trying to bully their way through," he said.

Pipeline construction was halted after the U.S. Fourth Circuit Court Appeals denied a full-court rehearing and ruled the U.S. Forest Service cannot allow the ACP to cross the Appalachian Trail without an act of Congress. Dominion faces other legal challenges to restarting construction with approvals from the U.S. Fish and Wildlife Service thrown out. Dominion responded to the rulings by announcing it would appeal to the U.S. Supreme Court by late May. While Dominion management has promised a legal or legislative remedy, the lack of either could compound investor worries, further extend delays, drive up costs more or scrap the ACP entirely.

It remains to be seen if executive orders issued on April 10 by the Trump administration will actually expedite gas pipeline construction. The administration's action could short-circuit the ability of states to weigh the risks — and curb the impacts — of projects like pipelines and dams to the lakes, rivers, streams and wetlands within their borders. A second order would curtail environmental reviews of energy pipelines that cross international borders.