



ABRA Update #256 – December 12, 2019

Briefs in Support of Dominion on AT Issue Filed With Supreme Court

Amicus briefs in support of the appeal by the U.S. Forest Service and Atlantic Coast, LLC to the U.S. Supreme Court in the *Cowpasture River, et. al.* case were filed on December 9. As noted in last week's *ABRA Update*, the brief for the respondents in the case, represented by the Southern Environmental Law Center, must be filed by January 15. Amicus briefs in support of the respondents' position are due January 22.

Among the seven amicus briefs filed were arguments from the Attorney Generals of 18 states (led by the Attorney General of West Virginia), 62 Members of the U.S. House of Representatives, and the Mountain Valley Pipeline. Also filing a brief was the Appalachian Trail Conservancy.

Links to the briefs filed are available by clicking [here](#). Below are excerpts from some of the filed amicus briefs:

States Attorneys General (18 Republican AGs, filed on their behalf by the AG of WV)

“... have deep concerns with the decision below, which destroyed the balance Congress baked into the Mineral Leasing Act and cut off thousands of miles of federal land from development. These concerns are especially pressing because the decision does not simply question the Forest Service's judgment or ask for a redo: It makes it impossible for any federal agency to grant any easement crossing the Appalachian Trail. In other words, without reversal one 1/10 mile crossing on a 600-mile pipeline route— a route that crosses 21 miles of national forests where rights-of-way indisputably can be granted—may stop the entire enterprise, as well as others to come.”

Members of U.S. House of Representatives (All 62 Representatives signing the brief are Republicans; most are more junior members of the House. Rep. Jeff Duncan, R-SC, was the leader of the filing. The list includes all 3 House Members from West Virginia and 9 of 10 Republicans in the 13-member North Carolina delegation. No House Members from Virginia were signatories.)

“Congress has many reasons to support domestic energy production and the necessary pipelines to transport energy resources safely, easily, and efficiently. For one, domestic energy production is a national-security issue. Producing more energy resources in the United States means purchasing less energy resources from other nations whose interests may not always align with those of the United States. For a second reason, domestic energy production is booming, and there must be a way to transport the resources America is producing. A third reason: domestic energy production spurs economic growth.”

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Appalachian Trail Conservancy (The ATC did not take a specific position for or against the appeal. It's brief focused on the history and relevance of the Appalachian Trail.)

The Appalachian Trail is a unique national resource—truly the “realm united by a trail” that Benton MacKaye imagined. Regardless how the Court decides the question presented, the Conservancy urges the Court to respect the values that the Trail embodies and the carefully constructed management system—painstakingly negotiated over decades, and functioning effectively for decades since. A hallmark of that system is the local ownership that agencies, volunteer Clubs, and communities feel regarding their Trail sections. And sharing of responsibility among the partners, under the Trails Act, has been central to fostering those relationships with the Trail. Altering this system could upend the National Trails System and subvert the very values that the Trails Act was meant to protect.

Fish and Wildlife Service Proceeding on Redrafting of New Permit

The biological opinion and taking statement issued for the Atlantic Coast Pipeline (ACP) by the U.S. Fish and Wildlife Service (FWS), and twice struck down by the Fourth Circuit Court of Appeals ([most recently in July of this year](#)), is once again on the drawing boards. Dominion Energy and FWS have begun consultations required under Section 7 of the Endangered Species Act (ESA). According to [minutes released this week of an October 22 meeting](#) between officials with Dominion, Duke Energy, FWS staff and the Federal Energy Regulatory Commission (FERC), the status of recent surveys that have been conducted on endangered species that would be affected by the ACP was reviewed. It was indicated that two species that were listed under the ESA since FERC's approval of the ACP – the yellow land and candy darter – will be included in the new assessment.

Construction on the ACP was halted in December of last year because of questions raised in the Fourth Circuit decision vacating the latest FWS biological opinion. FERC has indicated that it will not approve the resumption of ACP construction until there is a valid biological opinion.

Charitable Gifts by Utilities Used to Win Public Support, New Study Says

In a first-of-its-kind analysis, the [Energy and Policy Institute](#) (EPI) has examined the philanthropic contributions of 10 leading investor-owned electric utilities in the U.S. EPI found that “all of these major utilities use their charitable giving to manipulate politics, policies and regulation in ways designed to increase shareholder profits, often at the expense of low-income communities whose communities are more likely to bear the brunt of climate impacts and suffer higher levels of air pollution.”

Over 60% of the more than \$1 billion in charitable giving by the 10 studied utility companies between 2013 and 2017 was contributed by the three partner companies behind the Atlantic Coast Pipeline: Duke Energy, \$306.5 million; Dominion Energy, \$105.9 million; and Southern Company, \$209.2 million.

The EPI study, [Strings Attached](#), documents dozens of cases where organizations who received contributions from the utility companies engaged in political activities on the companies' behalf without disclosing that reality publicly. One practice revealed by the EPI analysis is that the companies “frequently use charitable giving to gain support from organizations that represent low-income communities and communities of color.” The study recommends that utility regulators assume “a responsibility to ensure that all organizations attempting to influence utility ratemaking or policy disclose whether they have a financial relationship to the utility.”

In the News:

Local/Atlantic Coast Pipeline

NC's attorney general not among 18 push for ACP construction

- The Robesonian – 12/9/19

<https://www.robsonian.com/news/129811/ncs-attorney-general-not-among-18-push-for-ACP-construction>

Interesting that of the three states billed to host the Atlantic Coast Pipeline, only West Virginia's AG is advocating for the project.

'Not Limited to Pipelines'; Supporters Step Forward to Cheer ACP's Supreme Court Petition

- Natural Gas Intelligence – 12/11/19

<https://www.naturalgasintel.com/articles/120445-not-limited-to-pipelines-supporters-step-forward-to-cheer-acps-supreme-court-petition>

Look at the proportion of coverage for each side of this issue. We'd better "get our messaging on". The oil and gas industry is controlling the narrative leading up to this case.

Big Energy front group launches push for troubled Atlantic Coast Pipeline

- Facing South – 12/6/19

<https://www.facingsouth.org/2019/12/big-energy-front-group-launches-push-troubled-atlantic-coast-pipeline>

Backed by big oil and gas money, a few suits in DC and boardrooms around the country claim to speak for the "energy rights of millions of Americans."

Is Del. Kaye Kory's Electric School Bus Proposal A Good Deal for Consumers – Or For Dominion Energy?

- Blue Virginia – 12/6/19

<https://bluevirginia.us/2019/12/is-del-kaye-korys-electric-school-bus-proposal-a-good-deal-for-consumers-or-for-dominion-energy>

Probably both...but maybe for consumers indirectly. An at-scale program to evaluate Vehicle-to-Grid technologies and strategies is needed to help propel the battery storage part of the transition to clean energy systems. Long-term, that brings costs down for everybody. Could Dominion do it NOT on our backs? Sure. But given the regulatory regime in which it operates, why *would* it?

"Strings Attached": New Report Examines How Dominion, Other Utilities "Use Charitable Giving to Influence Politics and Increase Investor Profits"

- Blue Virginia – 12/11/19

<https://bluevirginia.us/2019/12/strings-attached-new-report-examines-how-dominion-other-utilities-use-charitable-giving-to-influence-politics-and-increase-investor-profits>

Regional/Mountain Valley Pipeline, other

Munley: Past time for water board to stop pipeline

- The Roanoke Times – 12/12/19

https://www.roanoke.com/opinion/commentary/munley-past-time-for-water-board-to-stop-pipeline/article_f7fc43d7-20dc-5703-8a6a-defd0f7ced85.html

Shad Plank: Virginia delegate files Green New Deal bill

- Daily Press – 12/9/19

<https://www.dailypress.com/government/virginia/dp-nw-shad-plank-green-new-deal-20191209-zgdbxwgfzfnhwbll7elsqxhfc4q-story.html>

Big Picture:

Europe now has its own Green Deal

- Vox – 12/11/19

<https://www.vox.com/energy-and-environment/2019/12/11/21010681/european-green-new-deal-climate-change-cop25>

The European Union plans to eliminate its contributions to climate change by 2050. Its plan is light on how to do so. That said, it at least admits there is a real problem and is planning to do something about it.

D.C. Circuit to review 'Kafkaesque' FERC process

- E&E news – 12/6/19

<https://www.eenews.net/stories/1061735585>

Climate Change Is Ravaging the Arctic, Report Finds

- The New York Times – 12/10/19

<https://www.nytimes.com/2019/12/10/climate/climate-change-arctic-warming.html>

The canary is losing its feathers. We cannot leave the coal mine. But we can stop digging!

Natural gas is now the biggest contributor to the growth in emissions

- Deccan Chronicle – 12/4/19

<https://www.deccanchronicle.com/lifestyle/environment/041219/natural-gas-is-now-the-biggest-contributor-to-the-growth-in-emissions.html>

Global carbon emissions boosted by soaring natural gas use are set to hit record levels in 2019 despite a decline in coal consumption.

Natural Gas Boom Fizzles as a U.S. Glut Sinks Profits

- The New York Times – 12/11/19

<https://www.nytimes.com/2019/12/11/business/energy-environment/natural-gas-shale-chevron.html>

Chevron's multibillion-dollar write-down of gas assets is the most recent sign that the gas supply has far outstripped demand.

Related:

- <https://oilprice.com/Energy/Natural-Gas/Shales-Debt-Fueled-Drilling-Boom-Is-Coming-To-An-End.html>

Supertrees: Meet Indonesia's carbon guardian

- Vox – 12/12/19

<https://www.vox.com/2019/12/12/21009910/climate-change-indonesia-mangroves-palm-oil-shrimp-negative-emissions-blue-carbon>

Indonesia's mangroves are an incredibly effective tool against climate change — but they're being cut down to grow shrimp and palm oil for you.

Related:

- <https://www.vox.com/a/supertrees>

Renewables Are Gaining Traction, But We Need to Be Able to Store the Energy

- TruthOut – 12/10/19

<https://truthout.org/articles/renewables-are-gaining-traction-but-we-need-to-be-able-to-store-the-energy/>

Today, utilities have to produce the exact amount of electricity needed at a specific time to meet demand.

With advanced storage technology, it doesn't have to be that way.

Batteries Will Change the Energy Industry Forever

- The Motley Fool – 12/11/19

<https://www.fool.com/investing/2019/12/11/the-moment-is-here-for-energy-storage.aspx>

Energy storage is no longer an asset class that utilities can ignore. It makes money. They'll get on board.