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Feds seek to resume Atlantic Coast Pipeline construction

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MONTEREY – Sneaky stuff.

The Federal Energy Regulatory Commission staff on Monday asked the U.S. Fish and Wildlife Service to reinstate formal consultation so the proposed Atlantic Coast Pipeline project can resume construction.

The move to support construction comes after multiple requests by citizen groups for FERC to issue a stop-work order since several key pipeline permits have been rejected.

The “request for reinstatement of consultation, and discussion at the October 22, 2019, meeting as documented in the meeting minutes, suggest FWS is once again preparing to commit legal errors in an effort to approve this pipeline along Atlantic’s preferred route,” said Patrick Hunter of the Southern Environmental Law Center, in a letter to FERC Tuesday. “FWS cannot complete consultation on the ACP until it knows the final route of the pipeline.” Hunter cited FWS comments to reauthorize impacts on threatened and endangered species, including the candy darter and clubshell.

Additionally, SELC on Tuesday wrote to the Army Corps of Engineers advising that the pipeline company expressly plans to violate at least one of a permit’s general conditions and has taken steps to do so.

Instead of any environmental concerns, getting the pipeline built seemed to be the major force driving FERC to ask FWS to get the job done.

“On July 21, 2017, FERC initiated formal consultation with the FWS,” said David Swearingen, chief, FERC Gas Branch 4 Division of Gas, Environment and Engineering, recounted in a letter to Spencer Simon, FWS deputy assistant regional director.

New assessment needed

Swearingen noted that on Oct. 16, 2017, the USFWS transmitted its biological opinion and incidental take statement for the project, which was vacated by the U.S. Court of Appeals for the Fourth Circuit on May 15, 2018.

The USFWS issued a revised opinion and statement on Sept. 11, 2018. That, too, was vacated by the Fourth Circuit on July 26, 2019. As a result, formal consultation, including a new biological assessment and opinion, is required for the project to proceed.

He noted that informal consultation with the FWS has been ongoing, with the ultimate goal of updating the documents. FERC staff attended a meeting with Atlantic, Dominion, and the USFWS on Oct. 22, 2019, to discuss survey and technical needs. On Oct. 25, 2019, Atlantic and Dominion requested specific information from the Fish and Wildlife Service about species that will be covered.

Swearingen noted the USFWS said new information such as occurrence records and locations of specific populations relative to construction areas about some of the species is available. “Accordingly,” he said, “we are requesting re-initiation of formal consultation so that impacts related to the species covered in the biological opinion can be properly assessed.”

As of Tuesday, Southern Co. was no longer a partner in the project, after majority owner Dominion Energy agreed to buy its stake for \$175 million. Dominion will own 53 percent and Duke Energy will own 47 percent.

The 600-mile pipeline is now expected to cost \$8 billion, twice the original estimate in 2014.

The Allegheny-Blue Ridge Alliance reported last week that concerns over federal regulators’ shortsighted approach to pipeline review were discussed on Capitol Hill.

The Natural Gas Act, which has not been amended in decades, was the subject of a broad hearing calling for reform on Feb. 5 before the Energy Subcommittee of the U.S. House Committee on Energy and Commerce.

ABRA reported, “In opening remarks, Congressman Frank Pallone (DNJ), committee chair, said the Federal Energy Regulatory Commission ‘must take a more holistic view of the pipeline infrastructure already serving particular regions in order to determine whether new infrastructure is truly needed.’ Continuing, he said, ‘I am concerned FERC is simply approving duplicative pipelines, with 60-year lifespans, under the guise of market need even when those pipelines are not really necessary. The Atlantic Coast and Mountain Valley pipeline projects clearly illustrate the need for regional review. Both pipelines cross roughly the same areas in the Mid-Atlantic region and, in some instances, impact the same communities and landowners. Why do we need

that duplication? And while work on both pipes has been halted, much of the land damage has already been done because FERC allowed these duplicative projects to begin construction.”

‘Broken system’

Among the witnesses testifying at the hearing were former FERC commissioner Cheryl LaFleur and representatives of the Environmental Defense Fund, Delaware Waterkeepers and the Niskanen Center, all of whom raised many of the concerns ABRA has voiced over the years about the shortcomings of the FERC process, ABRA reported. “A letter to the subcommittee, to become part of the hearing record, was submitted by Richard Averitt IV, a Nelson County, Va., landowner, and 17 fellow landowners in the county whose properties would be impacted by the Atlantic Coast Pipeline.”

Their submission said, “We are outraged citizens who have spent nearly six years fighting for our most basic and fundamental rights to due process and property in a country founded on these sacrosanct principles. Moreover, while our specific experience relates to the Atlantic Coast Pipeline, our grievances are representative of injustices perpetrated against thousands of families across the country at this very moment along dozens of new pipelines routes. We are the victims of a broken system, a truly feckless FERC, an energy economy that is wildly incentivized to build infrastructure at any cost, and the outrageous lie that the public need for gas is driven by domestic demand while our nation races to be the largest global exporter.”

They continued, “The Natural Gas Act is the framework for these abuses and it has not been updated to reflect the massive changes in the energy economy or the new realities of a diverse energy market since 1962. As a result, the language of the Natural Gas Act is being misused by FERC to deny people their legal and constitutional rights, to strip and undermine the legal authority of states, to undermine the authority of other federal agencies, to ignore the mandates of the Clean Water Act and the National Environmental Policy Act, to trample private property rights, to take from communities the protection of public parks, forests and conserved lands that they have invested heavily in protecting, to take jobs and destroy small businesses, to harm our communities’ health, diminish our safety and damage our local environments, all for the benefit of a single industry seeking to advance its own corporate profits and business edge over its competitors.”

Bills designed to tighten state regulation of pipelines cleared the Agriculture, Chesapeake and Natural Resources Committee of the Virginia House of Delegates on Feb. 5, ABRA reported. The measures headed to the House floor earlier this week.

Pumping up penalties

The bills, sponsored by Del. Chris Hurst (D-Blacksburg), include:

- HB 643, which would reduce from 36 to 24 inches the minimum diameter of natural gas transmission pipeline that is subject to certain regulatory actions, including a stop work order;

- HB 644, which would direct the State Water Control Board to adopt regulations to penalize the accrual of water quality violations by large natural gas transmission pipeline projects;
- HB 646, which would authorize the State Water Control Board to include civil penalties of up to \$50,000 per violation, not to exceed \$500,000 per order. Current law sets these limits at \$32,500 and \$100,000, respectively.

ABRA reported legislation was introduced in the West Virginia House of Delegates that would heighten the penalties for protesting near oil and gas pipelines and other infrastructures. “Under the provisions of H.R 4615, knowingly trespassing on property containing a critical infrastructure facility is punishable by a year in jail and a \$500 fine. Criminal trespassing on critical infrastructure property with the intent to ‘vandalize, deface, tamper with equipment, or impede or inhibit operations’ of the facility is a felony punishable by up to three years in prison and a \$1,000 fine. An organization or person found to have ‘conspired’ to commit any of the offenses, regardless of whether they were committed, is subject to a criminal fine.”

The bill newly defines “critical infrastructure facility” under West Virginia law to include a range of oil, gas, electric, water, telecommunications, and railroad facilities that are fenced off or posted with signs indicating that entry is prohibited, ABRA reported.