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Dominion's requests need public input, SELC argues

July 23, 2020

BY JOHN BRUCE • STAFF WRITER

MONTEREY — If the latest requests and comments to federal regulators are any indication, it's going to take quite a while for the smoke to clear after cancellation of the Atlantic Coast Pipeline.

Last week, the Southern Environmental Law Center said two requests Dominion Energy made to the Federal Energy Regulatory Commission need extra FERC attention.

Friday, FERC set a 15-day comment period on Dominion's requests for extending the timeline by one year for the ACP stand down, and two years for completing the supply header project.

That was half the time SELC asked FERC to provide for stakeholders to address the modified request to extend the ACP's construction deadline.

SELC attorneys Greg Buppert, Mark Sabath and Emily Wyche advised in comments to FERC to deny the request for a two-year extension to complete and place into service the proposed Supply Header Project because the request fails to meet FERC's standard for granting extensions.

FERC has never granted an extension to an applicant deciding on whether to use a proposed project.

To the extent Dominion decides to move forward with the SHP minus the pipeline, Dominion must seek additional authorization from FERC in a new proceeding. FERC cannot act on the modified extension request for the ACP without providing an opportunity for additional intervention and public comment to address important questions.

Dominion requested a one-year extension for construction activities, which it asserts may be necessary for abandoning and restoring ACP project areas. "There may be good reason for this

extension, but Atlantic has provided little explanation for the commission's authority to grant this request and has left unaddressed details that will be important to the public," SELC said. "The public could not have anticipated the need to address restoration of the now abandoned right of way during the initial extension comment period, before Atlantic and DETI abandoned the ACP.

The attorneys argued FERC must, at minimum, provide another comment period of at least 30 days.

"For example, given the eminent domain authority that comes with a certificate order, and the hundreds of properties affected by the project, the public, and landowners in particular, will be interested in the status of Atlantic's easements and eminent domain authority during the restoration period and the landowners' associated rights to their property during this time," they argued.

"Any extension of the construction deadline must include conditions limiting Atlantic's authority under the certificate order, and public comment is necessary to identify what conditions would be appropriate. Specifically, if the commission grants the extension of time for construction activities, it must, at a minimum, address the following issues," they said. They listed those as:

- Limiting activities to only those necessary for restoring the right of way and abandoning the pipeline and vacating the remainder of the certificate order, in turn removing Dominion's eminent domain authority over the right of way.
- Identifying the mechanisms by which affected landowners will communicate specific restoration requirements to the company.
- Requiring Dominion to immediately commence consultation with all relevant state and federal agencies to promptly establish appropriate standards for completing restoration of the right of way.
- Identifying how FERC and other state and federal agencies will monitor restoration activities and associated environmental impacts. Monitoring could include a requirement that Dominion continue to submit regular status reports and environmental compliance monitoring reports during the restoration period.
- Requiring Dominion to promptly contact all landowners where a right of way easement exists and inform them Dominion will release the right of way easement within 90 days of a written request from an affected landowner; provide the landowner with the proposed written release; pay the reasonable attorneys' fees of the landowner in reviewing and negotiating changes to the easement; and file the final, executed written release of the easement in the land records of the appropriate jurisdiction. Dominion has already committed that landowners will keep the easement compensation they have received, they said.

"These are only a few of the important and complex issues that the commission must resolve and that the public must be permitted to address to help inform the commission's decision," SELC

said, noting that public comment, while necessary, should only be the first step in developing a restoration plan for the ACP project areas.

“The public comment period will serve to highlight the concerns of landowners, conservation groups, and other stakeholders,” SELC added; but because Dominion did not include details in its extension request on what restoration may require or look like, citizens will be limited in their ability to weigh in.

SELC filed the comments on behalf of the Alliance for the Shenandoah Valley, Cowpasture River Preservation Association, Friends of Buckingham, Friends of Nelson, Highlanders for Responsible Development, Piedmont Environmental Council, Shenandoah Valley Battlefields Foundation, Virginia Wilderness Committee, Sound Rivers, Inc., and Winyah Rivers Foundation.

FERC strongly encourages electronic filings of comments in lieu of paper using the “eFiling” link at www.ferc.gov. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, D.C. 20426.

Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Md. 20852.

The comment deadline is 5 p.m. on Aug. 3.