

How Trump's 'energy dominance' backfired on an \$8B pipeline

Mike Soraghan, E&E News reporter Published: Tuesday, July 7, 2020



The Trump administration tried to help developers speed construction of the Atlantic Coast pipeline. But the project was canceled Sunday. Claudine Hellmuth/E&E News (illustration); FOIA requests from USDA and Southern Environmental Law Center (documents); Library of Congress (pipes)

The legal and environmental troubles that helped doom the Atlantic Coast pipeline project have roots in the Trump administration's attempts to speed it up.

Directly, the challenges to the now-cancelled natural gas transmission pipeline resulted from a concerted legal effort by environmental groups and local opponents to stop the project, and judges who gave them a sympathetic ear.

But many of the problems cited by the judges who stalled construction were first raised by federal scientists and land managers, according to court records and correspondence obtained through the Freedom of Information Act (FOIA). Those career officials were often overruled when higher-ups in the Trump administration agreed to accelerate the approval process.

The orders to speed things up came after a lobbying scramble by the lead developer of the project, Dominion Energy Inc.

"If they'd put as much effort into fixing those problems as they did in getting meetings at the higher level, they'd have gotten it done a lot sooner," said Clyde Thompson, a national forest supervisor who was deeply involved in the process of permitting the pipeline before retiring in early 2018.

The Dakota Access pipeline, temporarily shut down yesterday by a federal judge, has a similar dynamic. President Trump ordered the project revived and accelerated on day five of his presidency. But a federal judge found "serious gaps" in the administration's National Environmental Policy Act review and yesterday ordered the line shut down while a new review is completed ([Greenwire](#), July 6).

The twin blows to the Atlantic Coast and Dakota Access projects highlight the risks of Trump's decision to pin hopes of reviving the virus-stunned economy on clearing away environmental reviews ([Greenwire](#), June 12). In another setback for Trump's "energy dominance" agenda, the Supreme Court yesterday kept in place an order blocking construction on the Keystone XL pipeline.

Dominion, the Richmond, Va.-based utility that led the Atlantic Coast project in partnership with Duke Energy Corp., has rejected the idea that its efforts got federal officials to cut short their environmental reviews.

"Our company has never asked for a rubber stamp," Dominion spokesman Aaron Ruby said last month before the project was canceled. "I fundamentally disagree that a three- to four-year process is an accelerated process."

Officials at the Forest Service and the Department of the Interior did not respond to questions from E&E News. White House officials declined to comment.

Lawyers with the Southern Environmental Law Center (SELC), who succeeded in getting the 4th U.S. Circuit Court of Appeals to stall the project, say the permitting process was hurried and flawed.

"All of this rushing resulted in permits with numerous legal errors," said SELC senior attorney Patrick Hunter. "They reflect an abandonment of the agencies' missions in favor of quickly approving a pipeline for a favored private company."

The Trump team has hit similar obstacles with other pipelines, despite its drive to speed up energy projects.

Environmental groups got judges on the 4th Circuit to pause construction on the Mountain Valley pipeline through Virginia and West Virginia, saying the Trump administration's handling of endangered species issues was inadequate ([Energywire](#), Oct. 15, 2019).

Trump sought to revive the Keystone XL pipeline at the same time as Dakota Access. But that hit a temporary roadblock when a federal judge in Montana homed in on an Obama administration decision on how to handle endangered species issues in wetland permits. The judge applied the ruling to a broad class of pipeline wetland permits, piling delays onto

projects such as Atlantic Coast and Mountain Valley. But late yesterday, the Supreme Court stepped in to reinstate the wetland permits for projects other than Keystone XL ([Greenwire](#), July 6).

Those rulings suggest the perils faced by energy companies if they seek shorter environmental reviews or accelerated permits, experts say. Even if bureaucrats and political appointees agree, most major projects get scrutinized by judges who may not see the need for urgency. And energy analyst Christine Tezak says environmental groups have been bringing more sophisticated and substantive lawsuits.

"It's gotten clearer since appeals judges started tossing permits for the Atlantic Coast pipeline that errors from rushed reviews can be worse than bureaucratic delays," said Tezak, managing director of research at ClearView Energy Partners.

That carries over to Trump's effort to revive the economy by clearing bureaucratic hurdles, said a lawyer who has worked on environmental reviews for the federal government and private companies.

"If I were counseling a company on a high-profile project," the lawyer said, "I would advise them not to seek any expedited permits that would be issued without normal environmental reviews."

But officials at Energy Transfer Partners, which owns the Dakota Access pipeline, say they are confident that the 1,200-mile oil pipeline won't be shut down once their legal appeals are heard.

"The economic implications of the Judge's order are too big to ignore and we will do all we can to ensure its continued operation," the company said in a statement yesterday.

'Light speed'

The Atlantic Coast pipeline was planned to run 600 miles, from northern West Virginia through the Appalachian Mountains to eastern North Carolina, delivering natural gas from the Marcellus Shale. Dominion and its partners announced the project in 2014, saying they hoped to complete it by 2018. The Obama administration had made natural gas a key feature of its plan to slow climate change, and with the backing of Terry McAuliffe, then the Democratic governor of Virginia, the pipeline had bipartisan support ([Climatewire](#), July 22, 2016).

The route of the project cut across 21 miles of national forest land in Virginia and West Virginia, including the Monongahela National Forest, where Thompson was forest supervisor. At the forest headquarters in Elkins, W.Va., staffers had felt pressure to complete pipeline reviews during the Obama administration, Thompson said. Still, he said, there was a new scramble when administrations changed and Trump came into office promising to bulldoze obstacles to energy projects.

Dominion pushed hard for a schedule that the career land managers and scientists at the Forest Service found unreasonable. The company wanted agencies to agree to the Federal Energy Regulatory Commission's plan for reviews to be done by October 2017. The two agencies have different missions. FERC oversees major energy projects and is charged with ensuring reliable, safe energy for consumers. The Forest Service's mission is the health, diversity and productivity of its public lands.

FERC had proposed the timeline to agencies the week before the 2016 election. The day after Trump won, Dominion's vice president for pipeline construction, Leslie Hartz, met with Robert Bonnie, the Obama appointee who oversaw the Forest Service, according to emails filed in connection with the appeals court case. She pressed for the agency to adopt FERC's timeline.

An answer came about a week later: No. In a letter back to FERC, Thompson said the Forest Service's obligations are set by laws that can't be bent to adjust for another agency.

"The Forest Service does not concur with the permitting timetable," Thompson said. He asked that the Forest Service's schedule be listed as "to be determined."

But Dominion kept pushing, and a senior Forest Service official, Associate Deputy Chief Glenn Casamassa, sensed that the pressure would only increase after Trump's Jan. 20, 2017, inauguration, according to emails.

"I would anticipate that direction to be coming our way in as early as end of January," Casamassa wrote in December 2016 to a top regional official in the agency.

The Forest Service wound up adhering rather closely to the schedule Dominion wanted. It issued its draft record of decision on the same day in July 2017 that FERC issued its final environmental impact statement. And the Forest Service issued its final record of decision about a month after FERC gave its final approval. The Fish and Wildlife Service issued its biological opinion — saying the pipeline is unlikely to jeopardize protected species — three days after FERC's approval.

Thompson was worried about landslides, or as he put it in a December 2016 email to headquarters, whether "the pipeline would stay on the mountain."

Based on the research he was seeing, he added, "I'm not optimistic."

The pipeline's path through the Appalachian Mountains cut through some of the most landslide-prone slopes in the country. A landslide can snap a large, high-pressure pipeline like a twig, creating a large steel blowtorch that burns for hours ([*Energywire*](#), June 14, 2019).

Thompson didn't like Dominion's approach to dealing with steep slopes. Their clash played out in a tug of war over "site-specific designs," which would lay out in step-by-step detail how Dominion's crews would handle the steepest, most difficult sections of the pipeline in the forest.

Forest Service officials had asked for 10 such plans before issuing a permit. After Dominion pushed back, they settled for two. Even the two site designs they got, Thompson said, weren't very specific, either. For example, the designs didn't map out the springs in the areas where water seeps out of the ground.

"They just had a different idea what 'site-specific' meant," he said.

Dominion officials said they had developed a "Best-in-Class" program to deal with steep slopes and had demonstrated their ability to build pipelines on steep slopes. Thompson said he was never convinced.

FERC's timeline also cut short reviews of protected species in the path of the pipeline, according to internal correspondence obtained by the Southern Environmental Law Center through a FOIA request.

FWS officials found themselves moving at what one described as "light speed," the emails said.

"Our internal direction is that we can't require surveys and will not make further requests for surveys that interfere with applicant's project schedule," Glenn Smith, assistant endangered species chief, wrote to colleagues in an [email](#). "We are being pushed to state up front that 'surveys are not required.'"

He added, "there are extensive conversations taking place between ACP and the Secretary's office." FWS is part of the Interior Department. At the time, Ryan Zinke was secretary of the Interior.

Dominion officials say they weren't trying to pressure federal officials but simply to compete for time and attention from harried officials at understaffed agencies.

"We don't want a rubber stamp," Ruby said. "The only thing we have asked is that [federal agencies] coordinate with each other."

'Mysteriously' changed

Whatever their goals, Dominion's lobbyists were pushing during the early days of Trump's transition to figure out which officials would be handling their project.

One, Kent Burton, finally found a transition official in February 2017 at the Department of Agriculture, which includes the Forest Service, named Brian Klippenstein. Burton [said](#) Dominion had "some headaches at USDA" and sought a meeting.

"ACP is a \$5-plus billion pipeline that will create thousands of jobs and transport over 1.5 Bcf gas/day," Burton said, "and is considered a major infrastructure initiative by the Trump Administration."

What followed, according to correspondence obtained by E&E News through FOIA, was an intensifying series of meetings between Dominion and top officials at the headquarters of the Forest Service and other agencies.

In March, the leader of Trump's USDA transition, Sam Clovis, **contacted** Doug Domenech on the transition team at Interior about FWS's work on the pipeline project. Domenech is now the assistant Interior secretary for insular and international affairs. In USDA's response to the FOIA request from E&E News, many of the communications from lobbyists were heavily redacted. E&E News has appealed those withholdings.

For their part, Dominion officials weren't happy that the Forest Service was still demanding two "site-specific" plans. After the request was renewed in May 2017, Hartz, the vice president for pipeline construction, responded tersely in an email to Thompson.

"I was under the clear impression that we were going to receive a letter saying that we had demonstrated our ability to construct on steep slopes," with specifics to be handled later, Hartz wrote. "I don't understand this change in direction."

But the judges of the 4th Circuit saw a different change in direction — a federal agency bending to the will of a powerful private company. And they cited as evidence a **letter** from Thompson reducing his request from ten to two designs.

Judge Stephanie Thacker wrote that the three-judge panel found it suspicious that the agency's "serious environmental concerns were suddenly, and mysteriously, assuaged in time to meet a private pipeline company's deadlines."

The same judges have twice struck down FWS's approval for the project as rushed.

"In fast-tracking its decisions, the agency appears to have lost sight of its mandate," wrote the court's chief judge, Roger Gregory.

The judges had also blocked the pipeline from crossing the Appalachian Trail. The Supreme Court overturned that decision last month, but the ruling didn't resolve problems with the other permits tossed by the appeals court (***Energywire***, June 16). Only about 6% of the pipeline is in the ground, and Dominion had recently asked FERC for a two-year extension of its authorization for the project.

With the delays, the cost of the pipeline rose to \$8 billion, up from \$5 billion when it was announced. Until Sunday, Dominion officials had insisted that they were plugging away on the project and hoping to start operations in 2022.

The industry's largest trade group, the American Petroleum Institute, yesterday blamed a "broken permitting system" for the setbacks, saying they leave projects vulnerable to "baseless, activist-led litigation."

But others laid blame for ACP's demise at Dominion's doorstep. Thompson contrasted Dominion's efforts with the approach of Columbia Gas Transmission (now TC Energy Corp.) on its WB Xpress pipeline. The company got approval in late 2017 for the 30-mile line, which runs through about 11 miles of the Monongahela National Forest. Company officials came to the Forest Service early in the process asking what would be needed to get approval, Thompson said. He said he and his colleagues learned about the Atlantic Coast project and its proposed route when they read about it in the newspaper.

As they celebrated, the environmental lawyers who blocked the project criticized Dominion's strategy for getting approval. SELC senior attorney Greg Buppert said company executives failed to see problems and adjust.

"Instead," Buppert said, "Dominion doubled down and used its clout to force permits through."