

SOUTHERN ENVIRONMENTAL LAW CENTER

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August 3, 2020

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: Comments on Modified Request for Extension of Time Submitted by
Dominion Energy Transmission, Inc., Dockets CP15-554 & CP15-555**

Dear Secretary Bose:

On July 20, 2020, Dominion Energy Transmission, Inc. (“DETI”) submitted a letter to the Commission modifying its June 16, 2020 request for an extension of time to construct and place into service the Atlantic Coast Pipeline (“ACP”) and Supply Header Project.¹ The Modified Extension Request came after the July 5, 2020 announcement by Dominion Energy and Duke Energy that they were canceling the ACP.² In its Modified Extension Request, DETI requests (1) a one-year extension of the construction deadline for the ACP to allow for abandonment and restoration of the ACP right-of-way; and (2) a two-year extension of time to construct and place the Supply Header Project into service while DETI evaluates options for the potential use of some or all of it.³

On behalf of Alliance for the Shenandoah Valley, Appalachian Voices, Chesapeake Bay Foundation, Inc., Chesapeake Climate Action Network, Cowpasture River Preservation Association, Friends of Buckingham, Friends of Nelson, Highlanders for Responsible Development, Piedmont Environmental Council, Shenandoah Valley Battlefields Foundation, Sierra Club, Sound Rivers, Inc., Virginia Wilderness Committee, Wild Virginia, Inc., and Winyah Rivers Foundation (collectively, “Conservation

¹ Letter from Matthew R. Bley, DETI, to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (July 10, 2020) (eLibrary No. 20200710-5088) (“Modified Extension Request”).

² *Dominion Energy and Duke Energy Cancel the Atlantic Coast Pipeline*, Atlantic Coast Pipeline (July 5, 2020), <https://bit.ly/38NZNJd>; *see also Dominion Energy and Duke Energy Cancel the Atlantic Coast Pipeline*, Dominion Energy (July 5, 2020), <https://bit.ly/2ZS94Mm>; *Dominion Energy and Duke Energy Cancel the Atlantic Coast Pipeline*, Duke Energy (July 5, 2020), <https://bit.ly/2CkEjHO>.

³ Modified Extension Request.

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Intervenors”), we submit these comments on DETI’s modified request.⁴ The comments contained in this letter are in addition to, and incorporate by reference, the comments Conservation Intervenors and certain landowners submitted on July 2, 2020, in response to DETI’s original extension request⁵ and the initial comments Conservation Intervenors submitted on July 17, 2020, in response to the Modified Extension Request.⁶

For the reasons set forth herein and in our prior comments, the Commission should (1) limit the scope of any extension of the ACP’s construction deadline to activities necessary for abandonment and restoration of ACP project areas; (2) condition any such limited extension on the release of easements and proper restoration of ACP project areas under a new restoration plan subject to public comment; and (3) deny DETI’s request for a two-year extension of time to construct the Supply Header Project and place it into service.

A. The Commission should limit the scope of any extension of the Atlantic Coast Pipeline’s construction deadline to activities necessary for abandonment and restoration of ACP project areas.

The Commission’s October 13, 2017 certificate of public convenience and necessity conditioned its grant of authority to construct and operate the ACP on DETI and Atlantic Coast Pipeline, LLC’s (“Atlantic’s”) “completion of the authorized construction of the proposed facilities and making them available for service within three years from the date of this order”—i.e., by October 13, 2020.⁷ In its Modified Extension Request, DETI seeks no extension of the Certificate Order’s in-service deadline, and only a limited extension of the construction deadline.

The Modified Extension Request expressly provides that “ACP will not be placed in-service, so no extension of the [Certificate] Order condition related to making its

⁴ The Commission granted Conservation Intervenors’ respective motions to intervene in the underlying proceeding. *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at ¶ 19 (2017) (“Certificate Order”). Conservation Intervenors also timely intervened in these extension request proceedings. Joint Mot. to Intervene and Comments in Opp’n to Req. for Extension of Time by Alliance for the Shenandoah Valley et al., Dkt. Nos. CP15-554 et al. (July 2, 2020) (eLibrary No. 20200702-5309) (“Conservation Intervenor Comments”).

⁵ Conservation Intervenor Comments.

⁶ Letter from Gregory Buppert, SELC, et al. to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (July 17, 2020) (eLibrary No. 20200717-5036) (“Conservation Intervenor Supplemental Comments”).

⁷ Certificate Order at 128–29.

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facilities available for service is now requested.”⁸ Accordingly, the Commission should grant no extension of the Certificate Order’s in-service deadline.

With respect to construction, the Modified Extension Request makes clear that “DETI has initiated planning the abandonment and restoration of ACP project areas,” and that “[c]ertain construction *associated with the abandonment and restoration* will be required.”⁹ DETI seeks no additional authority to construct the ACP beyond those activities necessary for abandonment and restoration. Consistent with DETI’s modified request, the Commission should limit the scope of any extension of the construction deadline to those activities necessary for the abandonment and restoration of ACP project areas.¹⁰

B. The Commission should condition any extension of the Atlantic Coast Pipeline’s construction deadline upon proper restoration of ACP project areas and release of easements as requested by landowners and conservation easement holders.

As DETI’s Modified Extension Request recognizes, the mid-construction cancellation of the ACP requires abandonment and restoration of the ACP right-of-way and other affected areas.¹¹ Several issues must be addressed on both public and private land to ensure adequate restoration of ACP project areas—including corridors where trees have been felled (but not necessarily cleared), farm fields impacted by construction activities, waterbodies under which pipe has been installed, and areas serving as habitat to protected species such as the endangered candy darter.

The existing Restoration and Rehabilitation Plan and Construction, Operations, and Maintenance (“COM”) Plan were prepared by Atlantic and DETI and approved by the Commission under the assumption that the ACP would be completed and the right-of-

⁸ Modified Extension Request.

⁹ *Id.* (emphasis added).

¹⁰ Indeed, granting broader construction authority would be unwarranted under the Commission’s test for weighing extension requests. As set forth in our comments on DETI’s original extension request, DETI has failed to demonstrate good cause for a blanket extension of the construction deadline, and significant developments since the issuance of the Certificate Order have undermined the Commission’s prior findings that the ACP is required by the public convenience and necessity and is an environmentally acceptable action. *See* Conservation Intervenor Comments at 12–66.

¹¹ Modified Extension Request.

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way permanently maintained.¹² The plans do not address what steps Atlantic must take following the project’s cancellation with approximately 6% of the pipeline completed. Nor has the public—which has a strong interest in the environmentally beneficial restoration of these lands and waterbodies—had the opportunity to review and comment on any such proposed restoration.

The Commission has acknowledged in these and other proceedings that it has the authority to require pipeline developers to remediate environmental harm caused by construction activities on pipeline projects that are not ultimately completed.¹³ Accordingly, and to restore the property rights of private landowners and conservation easement holders from whom Atlantic obtained easements for the now-canceled project,¹⁴ any extension of the ACP’s construction deadline should include the following conditions:

1. Require Atlantic to submit a new Restoration and Rehabilitation Plan to the Commission for approval after a period of public review and comment. In developing the plan, Atlantic must consult with all applicable federal and state agencies regarding

¹² See, e.g., Letter from Colin J. Walthall, DETI, to Kimberly D. Bose, FERC, App. A at 3, Dkt. Nos. CP15-554 et al. (Jan. 26, 2018) (eLibrary No. 20180126-5073) (“Restoration & Rehabilitation Plan”) (“Construction of the pipelines will be followed by restoration of the rights-of-way”); *id.* at 8 (“Atlantic and DETI will perform seeding of permanent vegetation during the Fall of the year construction is completed”); Letter from Angela M. Woolard, DETI, to Kimberly D. Bose, FERC, App. B at 143, Dkt. Nos. CP15-554 et al. (Oct. 27, 2017) (eLibrary No. 20171027-5240) (Oct. 2017 update to COM Plan) (“Construction of the pipeline will be followed by restoration of the right-of-way”); *id.* at 152 (“Atlantic will perform seeding of permanent vegetation during the fall or spring of the year in which construction is completed”).

¹³ See *Atl. Coast Pipeline, LLC*, 163 FERC ¶ 61,098, at ¶ 7 (2018) (asserting, in order upholding notices to proceed with construction, that Commission could require Atlantic and DETI to “undertake remediation” to “help ensure that any resulting environmental effects are minimized” should Certificate Order be vacated); see also *NEXUS Gas Transmission, LLC*, 162 FERC ¶ 61,011, at ¶ 7 (2018); *Northwest Pipeline, LLC*, 156 FERC ¶ 61,086, at ¶ 15 (2016).

¹⁴ Atlantic has already committed that landowners will keep any compensation they have received for easements Atlantic obtained through agreements with landowners or eminent domain. See Michael Martz, *Landowners Hopeful, But Wary After Cancellation of Atlantic Coast Pipeline*, Richmond Times-Dispatch (July 7, 2020), <https://bit.ly/3h2TRPq> (quoting Dominion Energy spokesperson as assuring that landowners “will, of course, keep any compensation they’ve received.”).

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standards for restoration, including (a) the U.S. Forest Service regarding restoration of national forest lands; (b) the U.S. Fish and Wildlife Service regarding restoration in endangered or threatened species habitat; and (c) appropriate state and private entities regarding restoration of private land subject to conservation easements.¹⁵ Recognizing that there should be no one-size-fits-all approach to restoration, the plan must also include a mechanism for affected landowners to communicate specific restoration requirements to Atlantic and for Atlantic to reimburse landowners for the reasonable costs incurred in obtaining professional advice as to appropriate restoration measures for their property.¹⁶ Such communication and compensation are critical where, as here, determining and completing the necessary restoration work for each property represents a substantial challenge.¹⁷ Finally, before approving any restoration plan, the Commission should notice the plan for public review and comment.

With respect to national forest lands, Atlantic's consultation with the Forest Service must consider any actions needed to allow areas cleared or otherwise disturbed on account of the ACP to return to their previous, natural conditions. The Commission authorized tree-clearing by non-mechanized means along the right-of-way within the

¹⁵ In Virginia, for example, Atlantic acquired rights-of-way across 8.7 miles of lands under open-space easements held by the Virginia Outdoors Foundation. FERC, Final Evtl. Impact Statement 4-401, Dkt. Nos. CP15-554 et al. (July 2017) (eLibrary No. 20170721-4000) ("EIS"). According to the Foundation, these easements "provide public benefits by protecting in perpetuity significant tracts of mostly undeveloped land that contribute to the protection of water quality, productive soils, natural heritage resources, historic resources, and scenic viewsheds." *Id.* at 4-403.

¹⁶ See *Reh'g En Banc Br. of FERC at 48, Allegheny Def. Project v. FERC*, No. 17-1098 (D.C. Cir. June 30, 2020), 2020 WL 635749, at *48 (recognizing that if certificate is vacated and pipeline does not go forward, pipeline company that proceeded with condemnation and construction prior to appellate review "would be liable to the landowner for the time it occupied the land and for any damages resulting to the land and to fixtures and improvements, or for the cost of restoration.") (quoting *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 826 (4th Cir. 2004)).

¹⁷ To provide just one example, many inaptly named "trees of heaven" (*Ailanthus altissima*) have sprouted up in disturbed areas at the entrance to Wintergreen Resort. The tree of heaven is a "highly aggressive invasive species that becomes rapidly established along forest edges, fields, and roadsides where it limits habitat for other species," killing and crowding out native vegetation. EIS 4-202; see also Letter from Matthew R. Bley, Dominion Transmission, Inc., to Kimberly D. Bose, FERC, Question 15 Attach. 1 tbl. 4-1, Dkt. Nos. CP15-554 et al. (Nov. 15, 2016) (eLibrary No. 20161115-5160) ("Invasive Plant Species Management Plan") (identifying *Ailanthus altissima* along ACP route).

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Monongahela and George Washington National Forests in early March 2018, and required felled trees and vegetation debris to be left in place.¹⁸ Atlantic cleared less than half of the right-of-way on national forest lands before stopping due to time-of-year restrictions¹⁹; the Forest Service authorization was subsequently stayed²⁰ and then vacated²¹ by the U.S. Court of Appeals for the Fourth Circuit in 2018. Two years later, Atlantic must, in consultation with the Forest Service, determine whether restoration is needed beyond allowing cleared portions of the right-of-way to revegetate, for example on any access roads that might have been disturbed in connection with non-mechanized tree-felling. Any such restoration should be consistent with Atlantic's obligations upon termination of the Forest Service's Special Use Permit for the ACP, which required a performance bond for environmental restoration activities.²²

2. Require Atlantic to continue to submit regular status reports and fund the Environmental Compliance Monitoring Program for the duration of abandonment and restoration activity. The Restoration and Rehabilitation Plan already requires Atlantic to submit quarterly reports to the Commission that “document any issues that arise during revegetation, including those identified by the landowner or land managing agency, and corrective actions taken for at least two years following construction.”²³ The Commission must ensure that Atlantic remains responsible for all restoration work until it is determined that such restoration has been successful.²⁴

¹⁸ Letter from Dave Swearingen, FERC, to Matthew R. Bley, DETI, Dkt. Nos. CP15-554 et al. (Mar. 9, 2018) (eLibrary No. 20180309-3008).

¹⁹ Fed. Resp'ts' Opp'n to Pet'rs' Mot. to Stay Agency Action Pending Review, Ex. D ¶¶ 6–8, *Cowpasture River Pres. Ass'n v. Forest Serv.*, No. 18-1144 (4th Cir. Sept. 21, 2018), ECF No. 100-2 (Forest Service declaration reporting that Atlantic had cleared 136 of 310 acres of right-of-way on national forest lands before reaching March 2018 time-of-year restriction).

²⁰ Order, *Cowpasture*, No. 18-1144 (4th Cir. Sept. 24, 2018), ECF No. 102.

²¹ *Cowpasture*, 911 F.3d 150 (4th Cir. 2018).

²² U.S. Forest Serv., Special Use Permit ¶¶ IV.J, VII.F (Feb. 8, 2018), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd571995.pdf.

²³ Restoration & Rehabilitation Plan § 11.2.

²⁴ See FERC, Upland Erosion Control, Revegetation, & Maintenance Plan § V.D.1.a (2013), <https://www.ferc.gov/sites/default/files/2020-04/upland-erosion-control-revegetation-maintenance-plan.pdf> (“The project sponsor is responsible for ensuring successful revegetation of soils disturbed by project-related activities”); FERC, Wetland & Waterbody Construction & Mitigation Procedures § VI.D.6 (2013), <https://www.ferc.gov/sites/default/files/2020-04/wetland-waterbody-construction->

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3. Require Atlantic to release its right-of-way easements upon request from private landowners or conservation easement holders. Atlantic must promptly contact the owners of all property, including conservation easement holders, where a right-of-way easement exists and inform them that (a) Atlantic will release the right-of-way easement within 90 days of a written request from an affected landowner or conservation easement holder; (b) Atlantic will provide the affected landowner or conservation easement holder with the proposed written release of the right-of-way easement; (c) Atlantic will pay the reasonable attorneys' fees of the affected landowner or conservation easement holder incurred in reviewing and negotiating changes to the proposed written release of the right-of-way easement; and (d) Atlantic will file the final, executed written release of the right-of-way easement in the land records of the appropriate jurisdiction.

C. The Commission should deny DETI's request for an extension of the Supply Header Project's construction and in-service deadlines.

1. A request to proceed with only the Supply Header Project requires additional proceedings and a new authorization from the Commission.

DETI's modified extension request to proceed with the Supply Header Project, absent the ACP, is a request to proceed with an entirely new project not authorized by the

mitigation-procedures.pdf ("For any wetland where revegetation is not successful at the end of 3 years after construction, ... [c]ontinue revegetation efforts ... until wetland revegetation is successful."); Restoration & Rehabilitation Plan § 5.1 ("The effectiveness of revegetation and permanent erosion control devices will be monitored for the life of the project by Atlantic and DETI operating personnel during the long-term operation and maintenance of the pipeline systems"), § 5.9 ("Permanent bank stabilization and erosion control devices ... will be installed as necessary on steep banks in accordance with permit requirements to permanently stabilize the banks and minimize sediment deposition into waterbodies."), § 5.10 ("Unless specified by landowners or land managing agencies, revegetation will be monitored annually until wetland revegetation is successful ..."); § 9.1 ("Atlantic and DETI will inspect disturbed areas after the first and second growing seasons to determine the success of revegetation. ... In Federal and State/Commonwealth forested areas, monitoring activities will be performed until reforestation is determined successful based on pre-defined success criteria Atlantic and DETI will continue revegetation efforts until they are successful."); Invasive Plant Species Management Plan, App. A at 3 ("Atlantic and DTI will continue revegetation efforts and monitoring until successful revegetation is achieved.").

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Certificate Order.²⁵ The Commission cannot authorize a wholesale rewrite of the approved project under the guise of granting an extension of the project’s construction and in-service deadlines. DETI must submit a new or amended certificate application.²⁶

Based on the record before the Commission, there is no need for the Supply Header Project without the ACP. DETI’s application for the Supply Header Project explained that DETI “executed a [single] binding precedent agreement ... with Atlantic, ... [and] [n]o other entity contracted with [DETI] for firm capacity on the [Supply Header Project].”²⁷ The Certificate Order similarly states that the Supply Header Project “is designed to provide ... natural gas transportation service from supply areas on the DETI system *to the proposed ACP Project.*”²⁸ Both the Commission²⁹ and DETI³⁰ have recognized that the Supply Header Project does not have utility independent of the ACP. A proposal to proceed with only the Supply Header Project constitutes a new project and requires DETI to provide evidence to support its authorization in a new or amended

²⁵ See Certificate Order ¶ 2 (“Supply Header Project is designed to provide ... natural gas transportation service from supply areas on the DETI system to the proposed ACP Project.”).

²⁶ The Commission has treated far less substantial modifications to an authorized project as requiring amendment of the original certificate. For example, in *Rover Pipeline*, where the developer sought a variance to install an additional compressor unit at a compressor station and a new equipment run at a meter station, the Commission announced that it would treat the variance request as an application to amend the certificate subject to public comment and a new environmental review. Notice of Amendment, *Rover Pipeline LLC*, Dkt. No. CP17-464 (June 16, 2017) (eLibrary No. 20170616-3017).

²⁷ Dominion Transmission, Inc., Abbreviated Appl. for Certificate of Public Convenience & Necessity at 8, Dkt. Nos. CP15-554 et al. (Sept. 18, 2015) (eLibrary No. 20150918-5215) (“Supply Header Project Application”).

²⁸ Certificate Order ¶ 2.

²⁹ Email from Kevin Bowman, FERC, to Elizabeth Stout, FWS (Aug. 9, 2017) (“ACP and [Supply Header Project] do not have independent utility. In [other] words, both projects must [move] forward together; neither project can proceed without the other.”) (**Exhibit 1**).

³⁰ Atl. Coast Pipeline, LLC, U.S. Army Corps of Eng’rs Meeting Minutes 3 (Apr. 30, 2015) (“Dominion stated that the [Supply Header Project] does not have independent utility and would not be built without construction of the ACP.”) (**Exhibit 2**).

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certificate application.³¹ The Commission must determine that there is a need for the modified Supply Header Project; whether, absent Atlantic as a customer, the Supply Header Project will be subsidized by DETI's existing customers³²; and whether a newly proposed use for gas transported on the Supply Header Project would adversely impact other pipelines and their captive customers.³³ A newly proposed use of gas, modifications to proposed facilities, newly available alternatives, and cumulative impacts based on a revised project timeline would also require new analysis under the National Environmental Policy Act. These analyses are necessary for the Commission to determine whether the public convenience and necessity require approval of DETI's newly modified project and whether the benefits of the Supply Header Project would outweigh its adverse effects.³⁴

Additionally, because a modified Supply Header Project would require introducing significant new evidence into the record, the public must be permitted to intervene and comment on any request to build and operate only the Supply Header Project.³⁵

2. DETI's modified extension request for the Supply Header Project fails to meet the Commission's standards for granting an extension.

Even if an extension request were the appropriate procedure for authorizing the modified Supply Header Project, DETI's modified extension request fails to establish

³¹ See Letter from Gregory Buppert, SELC, to Kimberly D. Bose, FERC, 3, Dkt. Nos. CP15-554 et al. (Aug. 15, 2018) (eLibrary No. 20180815-5058) (opposing DETI's prior attempt to move forward without full ACP for same reason).

³² See Certificate Order ¶ 71 (“[T]he threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers.”).

³³ See *id.* ¶ 72 (considering impact of Supply Header Project on other pipelines and their captive customers).

³⁴ See 15 U.S.C. § 717f(e); *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, 61,745–50 (1999).

³⁵ See, e.g., PennEast Pipeline Co., Abbreviated Appl. for Amendment to Certificate of Public Convenience and Necessity, Dkt. No. CP20-47 (Jan. 30, 2020) (eLibrary No. 20200130-5196) (creating new docket, proceeding, and comment period for proposed changes to PennEast Pipeline project).

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good cause for the extension and fails to offer evidence showing that the Commission's need determination and environmental analysis have not gone stale.³⁶

First, DETI has not shown that there is good cause to grant its extension request. As set forth in our comments on DETI's original extension request, the delay in constructing the Supply Header Project is the result of Atlantic and DETI's own discretionary action of ignoring the advice of expert agencies, not the result of unforeseeable circumstances.³⁷ Moreover, DETI's request appears to be unprecedented, seeking an extension not to complete the Supply Header Project and place it into service, but only to *potentially* do so after "evaluating options for use of some or all of the [Supply Header Project]."³⁸ To our knowledge, the Commission has never granted an extension request while a project applicant considers whether or not to complete or use the proposed project.³⁹ Rather, where the applicant cannot demonstrate that the project will actually be constructed and placed into service, the Commission has held that it must consider the impacts "imposed by a project that remains authorized but unbuilt" and "weigh those potential impacts against the prospects for the project ever being completed."⁴⁰

Second, with the cancellation of the ACP, the Commission's three-year-old determination that the Supply Header Project is required by the public convenience and necessity has plainly gone stale. DETI's request provides no evidence to the contrary. As discussed in Section C.1, above, the record before the Commission shows that the only purported need for the Supply Header Project was created by the ACP and that Atlantic was DETI's only customer.⁴¹ Given the significant change that has occurred since the Commission issued the Certificate Order—specifically, that Atlantic has abandoned the sole identified purpose for the Supply Header Project—the Commission

³⁶ See e.g., *PennEast Pipeline Co.*, 170 FERC ¶ 61,138, at ¶¶ 16–17 (2020) (holding that decision to grant extension request requires Commission to consider whether good cause exists and whether certificate's findings have become stale).

³⁷ See Conservation Intervenor Comments at 12–22.

³⁸ Modified Extension Request.

³⁹ Cf. *PennEast*, 170 FERC ¶ 61,138, at ¶¶ 7, 13 (finding good cause to grant extension where developer demonstrated "good faith efforts to meet its deadline" by making "reasonable efforts to move the project forward"); *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at ¶ 32 (2020) ("providing more time for a project applicant to obtain necessary permits can be an appropriate basis for granting an extension of time").

⁴⁰ *Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at ¶ 16 (2012).

⁴¹ Certificate Order ¶ 2; Supply Header Project Application at 8.

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cannot reasonably conclude, based on a single paragraph in DETI's letter reciting the construction status and location of the Supply Header Project, that the Commission's public convenience and necessity determination remains valid.

Third, the Commission's environmental analysis for the Supply Header Project is based on outdated information. In our comments on Atlantic and DETI's original extension request, we outlined significant new information relevant to the environmental impacts of the ACP and Supply Header Project, much of which remains relevant to the Supply Header Project even absent the ACP.⁴² Thus, the Commission's determination that the Supply Header Project is an environmentally acceptable project has gone stale.

D. Conclusion

For the reasons set forth herein and in our prior comments, the Commission should (1) limit the scope of any extension of the ACP's construction deadline to activities necessary for abandonment and restoration of ACP project areas; (2) condition any such limited extension on the release of easements and proper restoration of ACP project areas under a new restoration plan subject to public comment; and (3) deny DETI's request for a two-year extension of time to construct the Supply Header Project and place it into service.

Sincerely,

/s/ Gregory Buppert

Gregory Buppert

Mark Sabath

Emily C. Wyche

SOUTHERN ENVIRONMENTAL LAW CENTER

On behalf of 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

⁴² See Conservation Intervenor Comments at 38–66 (discussing water quality impacts from changes in regulatory protections, consideration of greenhouse gas emissions based on outdated science, failure to consider impact of ultraviolet exposure on integrity of pipes, and cumulative impacts analysis that considered impacts only through 2019).

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/s/ Benjamin A. Lockett

Benjamin A. Lockett

APPALACHIAN MOUNTAIN ADVOCATES

On behalf of Appalachian Voices, Chesapeake Climate Action Network, Sierra Club, and Wild Virginia, Inc.

/s/ Jon A. Mueller

Jon A. Mueller

CHESAPEAKE BAY FOUNDATION, INC.

On behalf of Chesapeake Bay Foundation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: August 3, 2020

/s/ Gregory Buppert
Gregory Buppert
SOUTHERN ENVIRONMENTAL LAW CENTER
201 West Main Street, Suite 14
Charlottesville, VA 22902
(434) 977-4090
gbuppert@selcva.org

Exhibit 1



Stout, Elizabeth <elizabeth_stout@fws.gov>

ACP + SHP

1 message

Kevin Bowman <Kevin.Bowman@ferc.gov>
To: "elizabeth_stout@fws.gov" <elizabeth_stout@fws.gov>

Wed, Aug 9, 2017 at 2:05 PM

ACP and SHP do not have independent utility. In order words, both projects must forward together; neither project can proceed without the other. One should expect a single FERC Order addressing both projects.

I see that our consult letter broke the projects out separately, but I'm guessing that happened so it wasn't interpreted as saying that, for example, the SHP by itself was LAA on the Madison Cave isopod. I believe it was listed that way for clarity, only. I'm not wedded to any particular way of presentation, so if you need to respond by saying "The Projects" "the action" or something similar that's inclusive of both, we'd understand that. Hope this makes sense.

Kevin Bowman

Environmental Protection Specialist

Federal Energy Regulatory Commission

202-502-6287

Exhibit 2

ATLANTIC COAST PROJECT

DRAFT PROJECT MEETING MINUTES



MEETING WITH (COMPANY/AGENCY):

U.S. Army Corps of Engineers (USACE) – ACP/SHP Project Coordination

DATE:

April 30, 2015

LOCATION:

USACE Norfolk District Office, Norfolk, VA

ATTENDEES AND THEIR AFFILIATION:

Colonel Paul B. Olsen, District Commander – USACE Norfolk District
 James (Jim) Haggerty, Regulatory Program Manager – USACE North Atlantic Division
 Tom Walker, Chief, Regulatory Branch - USACE Norfolk District
 Mark Haviland, Chief, Public Affairs - USACE Norfolk District
 Jean Gibby, Chief, Raleigh Regulatory Field Office – USACE Wilmington District
 Dale Beter, Chief, Wilmington Regulatory Field Office – USACE Wilmington District
 Peter Kube, Chief, Eastern Virginia Regulatory Section (EVRS) - USACE Norfolk District
 Jennifer Frye, Chief, Western Virginia Regulatory Section (WVRS) - USACE Norfolk District
 Adam Fannin, Regulatory Project Manager, Energy Resource Branch – USACE Huntington District
 Alani Taylor, Regulatory Specialist – USACE Pittsburgh District
 Craig Brown, Regulatory Specialist (Raleigh) – USACE Wilmington District
 Steve Gibson, Regulatory Specialist, EVRS, Project Manager, ACP – USACE Norfolk District
 Emily Greer, Regulatory Specialist – USACE Wilmington District
 Todd Miller, Environmental Scientist, Richmond Regulatory Field Office – USACE Norfolk District
 Josh Shaffer, Senior Regulatory Specialist - USACE Pittsburgh District
 Kevin Bowman, Environmental Protection Specialist - FERC
 Gertrude Johnson, Mechanical Engineer - FERC
 Leslie Hartz, Vice President, Pipeline Construction – Dominion
 Brian Wilson, Director, Natural Gas Infrastructure - Dominion
 Robert Bisha, Director, Environmental ACP – Dominion
 Carole McCoy, Director, Engineering Services – Dominion
 Bill Scarpinato, Manager, Environmental ACP - Dominion
 Brittany Moody, Manager, Pipeline Engineering ACP - Dominion
 Greg Park, Manager, Construction ACP – Dominion
 Molly Plautz, Manager, Federal Affairs - Dominion
 Ann Loomis, Senior Policy Advisor, Federal Affairs - Dominion
 Angela Woolard, Certificates Project Manager ACP – Dominion
 Sandy Williams, Environmental Projects Advisor ACP – Dominion
 Jennifer Broush, Project Manager Supply Header – Dominion contractor
 Spencer Trichell, ACP Permitting – NRG – Dominion contractor
 Wade Hammer, ACP Permitting – NRG – Dominion contractor
 Linda Morrison, Senior Advisor, USACE Corps Process – Dawson & Associates, Inc. -
 Dominion contractor

PREPARED BY:

S. Williams, M. Plautz

MEETING MINUTES:

Introduction:

The meeting began at 10:36 with an opening welcome by Colonel Olsen. He identified the Atlantic Coast Pipeline (ACP) project as a very exciting and important megaproject, involving four Corps District and three Divisions providing power to the nation helping to make the community, state, region and the country great. He mentioned that Governor McAuliffe supports the project as does the U.S. Army Corps of Engineers (USACE) moving to clean energy, relaying the Governor's main concern that the regulators take all of the natural and cultural resources into consideration as we

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April 30, 2015

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move forward. Additionally, he pointed out that minimizing impacts is important to the state and asked that we invite the state to the next meeting.

Project Status:

Brian Wilson presented a brief overview and the current status of the ACP with a presentation (attached).

FERC Process Update:

Kevin Bowman outlined the FERC process and the current status of the pre-filing activities on the ACP/SHP. He described the 12 Resource Reports that will be filed with his agency and the opportunity for review and coordination with the USACE. These reports will be used for the preparation of the Draft Environmental Impact Statement (DEIS), which will be prepared by a third party for FERC. The Resource Reports undergo an initial review for completion of statutory elements, but FERC relies on the agencies for specific review. Coordination is expected through scheduled calls with cooperating parties. Cooperating agencies include, at this time, US Forest Service (Monongahela, George Washington and Jefferson National Forests), US Fish and Wildlife Service (Great Dismal Swamp), USACE, and perhaps the Bureau of Land Management (BLM) if the Great Dismal Swamp National Wildlife Refuge is crossed. Several state and local regulatory agencies have requested status, but the final determination has not been made. Kevin mentioned that, in cooperation with all of the agencies, including the Forest Service, the comment period for the DEIS may be 90 days. Approximately 1 to 4 months following the comment period, Kevin indicated that a Record of Decision (ROD) could be issued. Following a question, Kevin theorized that the Preliminary DEIS could be distributed to cooperating agencies by the end of 2015.

Field Survey:

Spencer Trichell provided an overview of field survey and wetland verification in Virginia and North Carolina.

Coordination:

Steve Gibson mentioned that he has spoken with the Virginia SHPO and they were unaware of the project. In reply, Bob Bisha advised that Dominion had contacted all the SHPOs early on but would re-engage with them now. Steve also said he wanted to ensure that no stakeholders felt that they were shortchanged due to lack of survey due to inaccessibility to their property. In response to a question about how cooperating agencies will work with FERC and if there is a formalized process, Kevin indicated that a single point of contact from the lead District is appropriate. Formal letters were not generated due to the Federal Reduction in Paperwork Act, and that cooperating agencies and lead status were formalized in the Notice of Intent (NOI).

Jim Haggerty advised that a Project Management Plan (PMP) and a Project Delivery Team (PDT) will be formed for this project. This team will be established to support the entire application throughout the application evaluation process. The specifics of how the PDT will work are developed on a case-by-case basis accounting for specific project conditions. A PMP will be developed internally outlining the coordination process between the Corps Districts and Divisions as the Corps has discussions to determine the most effective permitting vehicle. At this point, coordination should continue through Sandy Williams and Steve Gibson until the PMP is completed. Ultimately, these conversations will lead to formalization of the process and identification of the lead district for the project. The District Commanders and possibly Division will need to agree with the process that is developed. Jim indicated that he will move the process forward as quickly as he can.

Linda Morrison advised that Dominion is currently assessing the permit application options for the project internally and would like to submit an assessment with a proposed recommendation in a few weeks to the Corps for consideration in its decision on how best to proceed with the permit application(s). Jim advised that that would be fine and they would review the information provided from Dominion.

In response to Peter Kube's question regarding whether the SHP would be constructed without the ACP, there was a brief discussion of a separate application for the SHP. Sandy Williams from

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Dominion stated that the SHP does not have independent utility and would not be built without construction of the ACP. The Corps will be looking at the Resource Reports to identify application and processing options.

Steve Gibson requested information on how other pipeline projects have been permitted. He was not aware of any other pipelines this size in Virginia. Bill Scarpinato pointed out the Transcontinental pipeline recently installed is 42". Steve continued that he wants to see collocation options and stressed that he continues to hear from citizens who say that Dominion is not responsive to their issues. Regarding collocation, Bob Bisha advised that Dominion has fully evaluated this issue and that Resource Report #10 fully evaluates collation options. Bob also requested that when Steve is contacted by the public, that he advise Dominion in order that Sandy Williams can make contact with them to address their questions. Steve also said that he was also concerned about the seasonality of the resources in the Coastal Plain as field work continues on the lateral line in Chesapeake. He also talked about recent pipeline requests to provide gas to the Brunswick and Greenville power stations. He asked for Dominion to be upfront if Dominion has any plans to export natural gas from the Hampton Roads area overseas (he heard that this may be planned at the Chesapeake Energy Center in Chesapeake). Brian Wilson responded that this pipeline will not be exporting natural gas at any location.

Interpolation of missing field data:

Spencer Trichell addressed the fact that there will be gaps in resource data due to denial of parcel access. Utilizing National Wetland Inventory (NWI) maps developed by the US Fish and Wildlife Service, recent LIDAR data, color infrared photography and nearby field delineated areas, a desktop analysis will be used to fill in these data gaps for application submission. Jim Haggerty indicated that this will be discussed with the PDT. Jim Haggerty mentioned that utilizing remote sensing data has been employed in New York District, but data will be required when parcel access is granted. He indicated that this method was likely acceptable but the PDT would make the final decision. Linda Morrison asked Jim if Dominion could submit a proposed approach for interpolation of missing field data for consideration by the Corps, and Jim advised that they would review the information.

Section 408:

Bob Bisha asked if the crossing under the S. Elizabeth River would be coordinated under Section 408. Jim Haggerty indicated that it was actually Section 14 of the Rivers and Harbors Act and that it applies to any Federal project. The activity would be coordinated through a concurrent review process developed in the Norfolk District. 408 decisions are reviewed by the District Commander. The PDT will also evaluate this issue.

Mitigation Criteria:

Sandy Williams also asked that the PDT consider mitigation requirements for conversion on the project. Jim Haggerty recognized that Dominion needs clarity on the mitigation approach for the permit application and would be addressed by the PDT. Additionally, the actual type of permit application to be submitted would need to be determined as well Jim said.

Jim Haggerty closed the meeting by committing to start discussions with his counterparts in Atlanta and Cincinnati on Friday and early next week and then pull in District Project Managers next week to make this application evaluation process as expeditious as possible. Jim advised that Dominion should continue to work with Steve Gibson for now on day to day issues, but for higher level/regional issues/concerns work with him.

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ACTION ITEMSACTION REQUIRED:BY WHOM:

- | | |
|---|--------------|
| 1. PDT formation and PMP development | USACE |
| 2. Assessment of permit options for ACP for consideration and decision by USACE (provided May 15, 2015) | Dominion/ACP |
| 3. Proposed approach for interpolation of field data to USACE PDT for consideration | Dominion/ACP |
| 4. SHPO updates on ACP | Dominion/ACP |
| 5. Draft Resource Reports to cooperating agencies for review and comment (scheduled by end of May 2015) | FERC/USACE |
| 6. State representatives invited to next meeting | USACE |
| 7. Mitigation approach developed and provided to Dominion | USACE PDT |
| 8. Provide Point of Contact (POC) for public inquiries to USACE | Dominion/ACP |

cc: Project Files

Attachments: Meeting handouts

From: Sara Thronson
Sent: Wednesday, July 01, 2015 6:07 PM
To: 'Ewing, Amy (DGIF)'; Smith, Kimberly (kimberly_smith@fws.gov); brian.watson@dgif.virginia.gov; Kirk, Dawn -FS
Cc: 'William A Scarpinato (Services - 6)'; Robert M Bisha (Services - 6) (robert.m.bisha@dom.com); Spencer Trichell; Sandra.H.Williams@dom.com; jennifer.c.broush@dom.com; Doug Lake; Patrick Robblee
Subject: ACP - Revised Virginia Mussel Study Plan - Part 1
Attachments: 150629 ACP FWS Cover Letter Revised Mussel Study Plan.pdf; 150629 ACP VDGIF Cover Letter Revised Mussel Study Plan.pdf; 150629 Revised ACP Virginia Mussel Study Plan.pdf

email 1 of 2 (the second half of the map set will follow in the next email due to file size, a hard copy will also be mailed)

Dear Ms. Smith and Ms. Ewing,

On behalf of the Atlantic Coast Pipeline (ACP) Project, Dominion Transmission Inc.(DTI) requests your review and concurrence of the attached revised plan, which describes the scope and methods the ACP Project will implement to address protected mussels in Virginia.

The attached plan is a revised version of the plan that was submitted for your review and comment on May 20, 2015. Dominion received comments from the US Fish and Wildlife Service (FWS) and Virginia Department of Game and Inland Fisheries (VDGIF). The attached cover letters summarize the comments that have been addressed in this revised plan.

DTI anticipates surveys for mussels will be initiated in July 2015. DTI looks forward to continued coordination with you on this project. Please contact Mr. William A. Scarpinato at (804) 273-3019 or William.A.Scarpinato@dom.com, or Ms. Sara Thronson at (612) 347-7113 or sara.thronson@nrg-llc.com if there are questions regarding this study plan.

Thank you, Sara



Sara Thronson
sara.thronson@nrg-llc.com
(612) 347-7113 Direct
(612) 716-7812 Cell
(612) 347-6780 Fax

Document Content(s)

ASV et al. Comments on DETI's Modified Extension Request.PDF.....1-13

Exhibit 1.PDF.....14-15

Exhibit 2.PDF.....16-21