

## E&E Energywire

### **FERC urged to restore property rights in axed pipeline's path**

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Landowners living along the 600-mile route of the canceled Atlantic Coast pipeline are asking the Federal Energy Regulatory Commission to help restore their property rights.

Nine months after the pipeline owners Dominion Energy Inc. and Duke Energy Corp. abandoned the natural gas project, landowners are still restricted in use of their properties under easement agreements with the companies, according to recent comments submitted to FERC. The pipeline would have run through central Virginia, North Carolina and West Virginia, but developers axed the \$8 billion project due to permitting delays and legal issues ([Energywire](#), July 5, 2020).

People who signed the easements are unable to build on affected parts of their property, operate farming equipment and other heavy machinery, or plant crops and trees, landowners and citizens groups wrote in their comments. The comments were submitted in response to the companies' restoration plan for the partially built project.

While the pipeline developers will evaluate landowners' requests "on a case-by-case basis," the companies plan to retain the easements, said Aaron Ruby, a spokesperson for Dominion Energy.

"More than 95 percent of landowners voluntarily agreed to the easements, and all landowners have been fairly compensated," Ruby said in an email. "Landowners will of course keep all compensation they've received."

Since FERC issued a certificate authorizing construction on the project, the commission should now compel the companies to release landowners from property restrictions and "preferably relinquish these easements altogether," wrote attorneys from the Niskanen Center on behalf of landowner groups. The easements are no longer in the public interest since the pipeline is not moving forward, they wrote.

"By granting [the Atlantic Coast pipeline] its Certificate, FERC created, and is ultimately responsible for, this situation," the Niskanen Center attorneys wrote.

The requests come as the commission is looking to improve its outreach to the public and communication with landowners impacted by its decisions. Last month, FERC

held the first of several listening sessions on the establishment of its new Office of Public Participation. Chairman Richard Glick, a Democrat who was appointed to lead the independent energy agency in January, has said the new office will be a priority under his leadership ([\*Energywire\*](#), Feb. 12).

"I do think that FERC has been trying to make itself more accessible to landowners and more conscientious of the effects of pipeline construction and operation on landowners," Jessica Bell, deputy director of the State Energy and Environmental Impact Center at the New York University School of Law, said in an email.

While many landowners along the route of the Atlantic Coast pipeline were relieved to hear that the project was canceled last year, it hasn't ended their six-year fight to secure their property rights, said Irene Leech, a landowner in Elliston, Va., who signed an easement agreement with the pipeline developers in 2018.

Many landowners only signed the agreements after the companies threatened to take their property through eminent domain, Leech said. Companies are permitted to use eminent domain after obtaining a certificate of public convenience and necessity from FERC, which the agency issues if it finds that a project serves the public interest.

Leech runs a longtime family business raising cattle but has been unable to make any changes to parts of her property because of the easement agreement, she said.

"We've talked about developing things where we might host sales or public events," Leech said in an interview. "No way we can do that as long as that easement is there."

The Board of Supervisors in Nelson County, Va., also asked FERC to require project developers to release the easements. More than 250 easements were filed in Nelson County, located near Charlottesville, which will reduce the tax valuation of affected properties and thereby decrease county tax revenue, the board members wrote in comments submitted April 14.

"Because the pipeline has been cancelled, there is no 'public use' for these justifications," the local officials wrote.

### **'Opportunity to build some trust'**

FERC's response to landowners' requests could test whether the commission is serious about being more receptive to public interests, said Joyce Burton, landowner liaison with Friends of Nelson County, a group advocating for impacted residents in the central Virginia county. FERC declined to comment on the issue, citing its pending status before the commission.

"I hope they take advantage of this opportunity to build some trust in the system," Burton said in an interview. "I think how they handle the situation is going to go a long way to showing landowners and impacted communities whether they really mean it."

But whether FERC can force the pipeline developers to relinquish the easements is a "tricky question," said Carolyn Elefant, an energy and eminent domain attorney who has previously represented landowners in pipeline cases and worked as an attorney at FERC. The commission typically does not get involved in eminent domain proceedings, she said.

Ruby, the Dominion spokesperson, declined to comment on the companies' reason for holding onto the easements.

It's possible that the companies are retaining them to justify the costs incurred to obtain them, or they may want to sell the easements to someone else, Elefant said.

"It's a very valuable commodity," she said. "I guess the company may think it'd be able to sell the easement for another pipeline or some other use, like a fiber-optic cable or transmission line. I don't know whether that'd fly."

Even if the commission does not compel the companies to give up the easements, Burton said she hopes commissioners might apply new terms to future certificates that would ensure that easements be relinquished if a project were not ultimately built or completed.

"We can try to leave, as a legacy, a change to the system, so it can't happen again," Burton said.

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