

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

In the matter of:)
)
Atlantic Coast Pipeline, LLC)
Docket Nos. CP15-554-000)
 PF15-6-000)
)
Dominion Transmission, Inc.)
Docket Nos. CP15-555-000)
 PF15-5-000)
)
Atlantic Coast Pipeline, LLC and)
Piedmont Natural Gas Company)
Docket No. CP15-556-000)
_____)

July 17, 2017

PUBLIC INTEREST GROUPS’ SECOND SUPPLEMENT TO JOINT MOTION
TO RESCIND OR SUPPLEMENT DEIS BASED ON NEW FILINGS

PURSUANT to FERC Rule 212 at 18 C.F.R. § 385.212, the National Environmental Policy Act (“NEPA”) at 42 U.S.C. § 4332, and 40 C.F.R. § 1502.9, now come the North Carolina Waste Awareness and Reduction Network (“NC WARN”); Clean Water for North Carolina; the NC APPPL: Stop the Pipeline; the Blue Ridge Environmental Defense League (“BREDL”), and its chapters, Protect Our Water! (Faber, VA), Concern for the New Generation (Buckingham, VA), Halifax & Northampton Concerned Stewards (Halifax and Northampton, NC), Nash Stop the Pipeline (Spring Hope, NC), Wilson County No Pipeline (Kenly, NC), Sampson County Citizens for a Safe Environment (Faison, NC), No Fracking In Stokes (Walnut Cove, NC), and Cumberland County Caring Voices (Eastover, NC); Sustainable Sandhills; Beyond Extreme Energy; The Climate Times; NC Climate Solutions Coalition; Triangle Women's International League

for Peace and Freedom; Haw River Assembly; Winyah Rivers Foundation, Inc.; River Guardian Foundation; 350.org Triangle; Eno River Unitarian Universalist Fellowship – Earth Justice, and the Chatham Research Group (together “the Public Interest Groups”), by and through the undersigned counsel, with this second supplement to the joint motion to the Commission to rescind or supplement the Draft Environmental Impact Statement (“DEIS”) on the Atlantic Coast Pipeline (“ACP”) based on new filings by Dominion.¹

SUPPLEMENT TO MOTION

As stated in the Public Interest Groups’ earlier joint motion and first supplement,² the Commission is required to rescind and supplement the DEIS in this matter because “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” At the same time, the present public comment period should be placed in abeyance until a new or supplemental DEIS is issued. To not allow the opportunity to comment on an application before it is completed makes a mockery of both the FERC and the NEPA processes.

To date, the Commission has not responded to the earlier joint motions.

¹ Additional groups have been added to those making the original motion. At least two of the movants are intervenors before FERC on the ACP – NC WARN and BREDL.

² Joint Motion to Rescind or Supplement DEIS, January 23, 2017, FERC Accession No. 20170124-5017; Supplement to Joint Motion To Rescind Or Supplement DEIS Based on New Filings, February 15, 2017, FERC Accession No. 20170215-0507.

SUPPORTING FACTS AND LAW

1. Subsequent to the issuance of the DEIS, Dominion has supplemented its application for the ACP on at least 18 occasions, and of these, 11 filings were further split into two separate filings, public and privileged.³ Many of these filings are further divided into many different appendices, and all in all, contain 1000's of pages of new data, figures, records, information, and analyses. In addition, Dominion has filed several responses to FERC data requests; again with new information filed subsequent to the issuance of the DEIS.

2. The supplement filings includes a wide range of new information not before the public, other governmental agencies, and FERC staff. The new information broadly includes, but is not limited to:

- route changes
- visual impacts
- updates on compressor stations
- steep slopes in West Virginia and Virginia
- impacts on forested sites
- archaeological sites
- cultural and historic sites
- construction, operations, and maintenance plans
- wetland and waterbody delineation
- stream crossings
- migratory bird plans

³ ATTACHMENT A lists the supplemental filings.

- aquatic species
- restoration plans for wetlands
- correspondence with state agencies and between state and federal agencies on water quality, air quality, wildlife resources, threatened and endangered species, and mitigation.

3. This new information is substantial and clearly supplements the information in the original application, the information supplied to FERC staff for their review, and the information available to intervenors and the public for comment. The information in the new filings must be fully reviewed and analyzed as it likely will have a significant bearing on the Commission's action and may be determinative whether the Commission issues a certificate or not. As such, the Commission is required to supplement the DEIS after receiving the new filings. 40 CFR 1502.9(c)(1)(ii) specifically addresses the obligation of the agencies to supplement to the environmental statements, stating:

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(emphasis added).

4. Case law on the agency's requirement to supplement an environmental document is clear; new information causes environmental documents to be supplemented. As stated in the initial joint motion, the Commission is required to take a "hard look" at new information **even** after a proposal had received its initial approval,

and permit, from the agency. In its review of one action, the Court found there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004) (new study of use of park lands). Of course, not all new information is significant or relevant; but the Commission is required to take a "hard look" at the new information and after review, incorporate into environmental documents. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989).

5. The new, late-filed information from Dominion is relevant and significant, directly concerning many of the environmental issues the Commission is required to review and fully analyze. The burden is on the Commission to fully investigate the environmental risks and costs associated with the ACP, including all new and supplemental information. The new information then becomes part of a DEIS and it is then reviewed and commented on by other agencies and the public.

RELIEF REQUESTED

The Public Interest Groups respectfully renew their joint motion. In this matter, the Commission must take a "hard look" at the new information, review it in the context of the application and current public comments, and then supplement the DEIS to incorporate the new information. At the same time, the Commission should rescind the DEIS and hold the public comment period in abeyance until it issues the supplemental DEIS. Lastly, the Commission should require Dominion to file all additional supplemental information before proceeding further.

ON BEHALF OF THE PUBLIC INTEREST GROUPS

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Supplementary Filings by Dominion on ACP Subsequent to Issuance of DEIS

July 14, 2017. FERC Accession No. 20170714-5128

June 27, 2017. FERC Accession No. 20170627-5040

June 16, 2017. FERC Accession No. 20170616-5153 and 5154

June 9, 2017. FERC Accession No. 20170609-5197 and 5198

June 2, 2017. FERC Accession No. 20170602-5056

May 26, 2017. FERC Accession No. 20170526-5257

May 12, 2017. FERC Accession No. 20170512-5163 and 5164

May 9, 2017. FERC Accession No. 20170510-0017

May 5, 2017. FERC Accession No. 20170505-5036 and 0537

April 12, 2017. FERC Accession No. 20170412-5098 and 5099

April 6, 2017. FERC Accession No. 20170406-5362 and 5363

March 24, 2017. FERC Accession No. 20170324-5283 and 5284

March 10, 2017. FERC Accession No. 20170310-5157 and 5178

February 28, 2017. FERC Accession No. 20170301-0030

February 24, 2017. FERC Accession No. 20170224-5149 and 5150

February 9, 2017. FERC Accession No. 20170209-5263

January 27, 2017. FERC Accession No. 20170127-5202 and 5203

January 19, 2017. FERC Accession No. 20170119-5180 and 5181

January 10, 2017. FERC Accession No. 20170110-5142 and 5143

DEIS issued December 30, 2016. FERC Accession No. 20161230-4000