

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)
_____)

January 23, 2017

JOINT MOTION TO RESCIND OR SUPPLEMENT DEIS

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), and Cumberland County Caring Voices (Eastover, NC); Sustainable Sandhills; Beyond Extreme Energy; The Climate Times; 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 NoFrackingInStokes (together “the Public Interest Groups”), by and through the undersigned counsel, with a joint motion to the Commission to rescind or supplement the Draft Environmental Impact Statement (“DEIS”) on the Atlantic Coast Pipeline (“ACP”) issued on December 30, 2016 in the above captioned dockets.

MOTION

Pursuant to NEPA at 42 U.S.C. § 4332, and the rules promulgated under it implementing its procedural provisions, and specifically 40 C.F.R. § 1502.9(c)(1)(ii), the Public Interest Groups move that the Commission rescinds and supplements 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.

SUPPORTING FACTS AND LAW

1. The Public Interest Groups are not-for-profit corporations under the laws of North Carolina and Virginia law acting in the public interest and community groups organized to protect the family and property of their members. Several of the Public Interest Groups, including but not limited to NC WARN and BREDL are intervenors in this proceeding pursuant to Commission Notice Granting Late Interventions, November 8, 2016. As intervenors they have the ability to make motions to the Commission

pursuant to Commission Rule 212, 18 C.F.R. § 385.212. Although the interests of the intervenors are more clearly stated in their respective motions to intervene, those same interests are held by each of the Public Interest Groups. The Public Interest Groups and their members will be significantly affected by the proposed ACP.

2. On September 18, 2015, the ACP LLC filed an application under section 7(c) of the Natural Gas Act, requesting authorization to construct, own, and operate the ACP, including three compressor stations and at least 564 miles of pipeline across West Virginia, Virginia, and North Carolina. The ACP is a joint venture of Dominion Resources, Inc., Duke Energy Corporation, Piedmont Natural Gas Company, Inc. (now a wholly owned subsidiary of Duke Energy), and AGL Resources, Inc. (collectively, “Dominion”).

3. On October 2, 2015, the Commission filed its Notice of Application, providing additional details about the application and outlining the review process, and opportunities for public comment.

4. The Commission has authority under NGA Section 7 (Interstate Natural Gas Pipelines and Storage Facilities) to issue a Certificate of Public Convenience and Necessity (“certificate”) to construct a natural gas pipeline. As described in the Commission guidance manuals, environmental documents are required to describe the purpose and commercial need for the project, the transportation rate to be charged to customers, proposed project facilities, and how the company will comply with all applicable regulatory requirements.¹ The applicants must evaluate project alternatives,

¹ Both the FERC Guidance Manual for Environmental Report Preparation (August 2002) and the Draft Guidance Manual for Environmental Report Preparation (December 2015) provide the minimum analysis required by the agency in preparing environmental documents. Neither guidance manual discusses the requirement to supplement environmental documents so the Commission must rely on NEPA guidance.

identify a preferred route, and complete a thorough environmental analysis – including consultation with appropriate regulatory agencies, data reviews, and field surveys. The Commission is required to analyze the information provided by Dominion to determine if the project is one of public convenience and necessity. The purpose of the Commission’s review is to reduce overbuilding of pipeline capacity in order to protect consumers and property owners.

5. As part of its review process, the Commission prepares environmental documents, and in this case, a DEIS was prepared and released on December 30, 2016. As part of the release, the Commission provided a public comment period until April 6, 2017. Subsequently, the Commission scheduled “public comment sessions” in ten locations along the ACP route to allow for public comments.

6. On January 10, 2017, Dominion filed an additional fourteen documents supplementing its original application.² This filing of new information contains thousands of new pages of information, voluminous appendices, and attachments on environmental issues directly relevant to the DEIS.³ ATTACHMENT A to this motion briefly summarizes the contents of the new documents including, but not limited to:

- historic properties in West Virginia, Virginia, and North Carolina

² https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20170110-5142

³ On January 23, 2017, Dominion filed an additional 12 files of supplemental information and another seven files updating its visual impact assessment. Although none of these files have been reviewed by the Public Interest Groups, the filing of new information supports their legal argument the DEIS is required to be supplemented. http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170123-5110
http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170119-5180

- supplemental updates on compressor stations, metering and regulation stations, steep slopes in West Virginia and Virginia, archaeological sites, and impacts of forest fragmentation on bird species
- maps of non-jurisdictional facilities
- engineering updates on horizontal directional drilling, river crossings, and hydrofracture risk
- geological considerations in West Virginia
- cultural resources in West Virginia, including cemeteries
- restoration plans for wetlands
- considerations of soil, erosion, and steep slopes; direct impacts on forested sites in West Virginia, Virginia, and North Carolina
- impacts on streams and biotic resources
- removal and relocation of aquatic species
- correspondence with state agencies and between state and federal agencies on water quality, air quality, wildlife resources, threatened and endangered species, and mitigation

This new information clearly supplements the information in the original application, the information supplied to FERC staff for their review, and any information available to intervenors and the public.

7. As such, the Commission is required to supplement the DEIS after receiving the new filings. Rules promulgated by the Council on Environmental Quality pursuant to NEPA provide mandatory guidance to all Federal agencies on the preparation of

environmental statements. 40 C.F.R. 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). As shown above, the new filings by Dominion on January 10, 2017, are squarely within the requirements of this rule. The information is significant and directly relevant to environmental concerns and impacts addressed in the DEIS and, after review by the agency and public review, the information in the new filings is likely to have a bearing on the Commission's action.

8. The timing of Dominion's filing of the new information is suspect and appears to have been held until the agency had issued the DEIS. Most, if not all, of the information filed on January 10, 2017, has clearly been prepared earlier to its filing date and withheld from public and agency review until after the DEIS was issued. One of the relevant documents (Appendix B, HDD Design Report) was dated as early as December 14, 2016. Even giving Dominion the benefit of the doubt over the propriety of a late filing, the information in new filings is both substantive and relevant, fitting clearly under the provisions of 40 C.F.R. 1502.9(c)(1)(ii). Therefore, the public comment period on the DEIS should be held in abeyance until agency staff and the Commission review the new information and supplement the DEIS.

9. Case law on the agency's requirement to supplement an environmental document is clear. New information causes environmental documents to be supplemented, even after the environmental document has been completed and the agency action taken. 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 it into environmental documents. As discussed in *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989), "

The parties are in essential agreement concerning the standard that governs an agency's decision whether to prepare a supplemental EIS. They agree that an agency should apply a "rule of reason," and the cases they cite in support of this standard explicate this rule in the same basic terms. These cases make clear that an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made. On the other hand, and as the petitioners concede, NEPA does require that agencies take a "hard look" at the environmental effects of their planned action, even after a proposal has received initial approval.

The Court endorsed the "hard look" at new information even after a proposal had received its initial approval, and permit, from the agency. "When new information is presented, the agency is obligated to consider and evaluate it and to make a reasoned decision as to whether it shows that any proposed action will affect the environment in a significant manner not already considered." *Ibid.*, 490 U.S. at 374; also endorsed by the Court in *Arkansas Wildlife v. U.S. Army Corps*, 431 F.3d 1096 (Fed. 8th Cir., 2005).

10. The Public Interest Groups believe the mandate for a full analysis of the “public convenience and necessity” for pipelines involves more than responding to a professed need for capacity. 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.

RELIEF REQUESTED

The Public Interest Groups respectfully request that the Commission grant 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.

ON BEHALF OF THE PUBLIC INTEREST GROUPS

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ATTACHMENT A

Supplemental Filing for ACP DEIS - filed with FERC on 1/10/17

all files accessed from: https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20170110-5142

Link to doc	FERC document number	Document Name	Content
PUBLIC Cover Letter 1-10-17 Suppl Info.PDF	30381	PUBLIC Appendix F Part 1, WV Structures	Historic properties in WV covered under Section 106 of the Historic Preservation Act
PUBLIC Supplemental Filing_1-10-2017.PDF	315864	Supplemental	Update on Non-jurisdictional facilities: <ul style="list-style-type: none">• Update on compressor stations 1 and 3• Update on Northampton office building and M&R (metering and regulation) station• Update on steep slopes in WV and VA• Archaeological sites in WV, VA and NC• Effects of forest fragmentation on bird species• North Carolina aquatic species removal plan
PUBLIC Appendix A NonJur Facilities.PDF	3553746	Supplemental Appendix A	Maps of non-jurisdictional facilities

PUBLIC Appendix B HDD Design Report.PDF	12120999	Appendix B, HDD Design Report (12/14/16)	<p>Engineering updates:</p> <ul style="list-style-type: none"> • HDD (Horizontal Directional Drilling) (how pipeline is installed) • Discusses pipeline crossings on rivers and highways - pipes range from 20 to 42 inches in diameter, and length - 1500 to 4700 feet horizontally. Rivers include Cape Fear, James, Tar-Pamlico • Factors that affect feasibility of HDD - p 4-5 • Area required, drilling fluid (including p 8 photo of drilling fluid problems) • Page 10 has hydrofracture risk by location (including one is high on Route 17) <ul style="list-style-type: none"> ○ Engineering stress criteria, "pulling loads" ○ Has stress loads by pipe diameter ○ Risks at listed rivers • Engineering documents and maps
PUBLIC Appendix C Site Specific Geo Design.PDF	3476698	Appendix C, Revised Site Specific Geohazard Mitigation Design Drawings, 61 pp	<ul style="list-style-type: none"> • steep slopes in WV • Addresses concerns brought up by Tom Collins of the Forest Service on mountainous terrains and geography
PUBLIC Appendix F Part 1 WV Structures Add 4.PDF	8897021	Appendix F, Cultural Resources	117 pages, addresses cemeteries and other cultural resources in WV

PUBLIC Appendix F Part 2a VA Structures Add 4.PDF	16268172	Section 106 Review, VA only	138 pages, re: historic properties in VA, only refers to North Carolina in historic accounts of settlement
PUBLIC Appendix F Part 2b VA Structures Add 4.PDF	36181750		Addendum to above filing on VA historic properties
PUBLIC Appendix F Part 3 NC Structures Add 3.PDF	8637095	Section 106 review in North Carolina;	84 pages, includes 10 historic dwellings in Cumberland County, NC on p. 36
PUBLIC Appendix G Restoration and Rehab Plan.PDF	2964624	Appendix G, Restoration and Rehabilitation Plan	<ul style="list-style-type: none"> • Restoration plans for sites in NC and VA; 93 pages (Updated, Rev. 4) • Re: erosion, soil, steep slopes, agricultural areas, wetland restoration • experts consulted • list of sites in North Carolina and drainage characteristics by county
PUBLIC Appendix H Forest Fragmentation Analysis.PDF	389979	Appendix H, Forest Fragmentation Analysis	Direct impacts on list of forested sites in WV, VA and NC
PUBLIC Appendix I NC Aquatics	609664	Appendix I, North Carolina Fish and	letter to NC Wildlife Resources Commission requesting comments on Tier 1 and Tier 2 streams; biotic resources, including mussels;

Removal.PDF		Non-Fish Aquatics Collection and Relocation Protocol for Instream Construction Activities	netting and removal/relocation of fish and non-fish species
PUBLIC Appendix J ACP Agency Correspondence.PDF	47297233	Correspondence with all agencies	308 pp. on correspondence with state agencies and communications between state agencies and federal agencies on air and water quality; wildlife resources (including specific species threatened by pipeline); mitigation
PUBLIC Appendix K SHP Agency Correspondence.PDF	205894	PA Section 106 review	Additional historic review