



ABRA Update #152 – October 19, 2017

FERC Decisions: What's Next?

Last week's "Friday the 13th Massacre" decisions by the Federal Energy Regulatory Commission to approve the Atlantic Coast Pipeline (ACP) and Mountain Valley Pipeline (MCP) have spawned a flurry of analysis and speculation about next steps. Both projects must still receive approvals from other government agencies, particularly water quality certifications under Section 401 of the federal Clean Water Act from the environmental authorities in the states through which the projects traverse: West Virginia, Virginia and, in the case of the ACP, also North Carolina. There will be a more in-depth discussion of the 401 reviews in next week's *ABRA Update*.

In addition to other government agencies approvals being granted, each project is subject to satisfying specified environmental conditions set forth in their respective decision order that require the applicant to file additional information prior to construction or during operations. In the case of the MVP, there are 40 cited conditions (see [Appendix C, p. 124, of the decision Order](#)). For the ACP, there are 73 environmental conditions ([Appendix A, p. 132](#)).

Here are some highlights from the ACP listed conditions:

1. Atlantic shall follow the construction procedures and mitigation measures described in their applications and supplements (including responses to staff data requests) and as identified in the EIS, unless modified by the Order.
4. Atlantic's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Atlantic's rights of eminent domain granted under NGA section 7(h) do not authorize them to increase the size of their natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.
6. At least 45 days prior to construction, Atlantic and DETI shall file their respective Implementation Plans with the Secretary, for review and written approval by the Director of OEP. Atlantic and DETI must file revisions to their plans as schedules change.
10. Atlantic and DETI must receive written authorization from the Director of OEP before commencing construction of any project facilities. To obtain such authorization, Atlantic and DETI must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof). The Director of OEP will not issue a notice to proceed with construction of the Atlantic or DETI project facilities independently.

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13. Atlantic shall not exercise eminent domain authority granted under section 7(h) of the NGA to acquire a permanent pipeline right-of-way exceeding 50 feet in width. In addition, where Atlantic has obtained a larger permanent right-of-way width through landowner negotiations, routine vegetation mowing and clearing over the permanent right-of-way shall not exceed 50 feet in width.
23. As part of their Implementation Plans, Atlantic and DETI shall file with the Secretary, for review and written approval by the Director of OEP, a final *Timber Removal Plan* that:
 - a. incorporates the recommendations included in the Virginia Department of Environmental Quality's (VDEQ) letter dated April 6, 2017
 - b. updates the construction schedule discussion; and
 - c. updates all time of year restrictions (TOYR) related to migratory birds and special status species for tree clearing.
24. As part of their Implementation Plans, Atlantic and DETI shall file with the Secretary, for review and written approval by the Director of OEP, finalized site-specific *Timber Extraction Plans*.
29. As part of its Implementation Plan, Atlantic shall file with the Secretary, for review and written approval by the Director of OEP, a revised *Karst Terrain Assessment Construction, Monitoring, and Mitigation Plan* that includes monitoring of all potential karst areas for subsidence and collapse using LiDAR monitoring methods during years 1, 2, and 5 following construction.
30. As part of its Implementation Plan, Atlantic shall file with the Secretary, for review and written approval by the Director of OEP, updated site-specific crossing plans for major waterbody crossings. The plans shall include, as necessary, the location of temporary bridges and bridge type, appropriate cofferdam locations, water discharge structure locations, pump locations, and agency-imposed TOYR and construction and restoration requirements.
41. As part of its Implementation Plan, Atlantic shall file a final copy of its *Haul Plan*, which will address transportation of equipment, materials, and personnel along narrow public roads in steep terrain.
68. Atlantic shall offer to conduct, with the landowner's permission, postconstruction water quality tests, using the same parameters used in the preconstruction tests, for all water supply wells and springs within 150 feet of the construction workspace and within 500 feet of the construction workspace in karst terrain.

VOF Allows ACP and MVP to Cross Environmental Easements

Last Monday's decision by the Virginia Outdoors Foundation (VOF) to permit the conversion of ten environmental easements it holds on properties along the ACP route and one along the MVP route (reported to *ABRA Update* readers in a special email Monday night) were a serious disappointment to all who believe in the integrity and importance of the concept of environmental easements. The [VOF statement on the actions](#) states:

In the [resolutions approving the applications](#), the trustees said that, while the developers failed to demonstrate the projects are "essential to the orderly development and growth of the locality" under section 1704 of the Virginia Open-space Land Act, this requirement is superseded and preempted by the federal Natural Gas Act that authorizes FERC's certificate process. The Natural Gas Act does not, however, strip VOF's authority to review the projects and require substitute land of greater conservation value under Virginia law.

Many would strongly disagree with that stated conclusion.

In the News:

Local/Atlantic Coast Pipeline

Feds approve pipelines

- The Recorder – 10/19/17

https://www.abralliance.org/wp-content/uploads/2017/10/Feds_approve_pipelines-Recorder_20171019.pdf

LaFleur dissents in FERC decision, a rare instance of disagreement within the Commission

Related:

- <http://pulse.ncpolicywatch.org/2017/10/16/ferc-approves-atlantic-coast-pipeline-lawsuits-likely/#sthash.DxRrVBAV.S6Jhxiug.dpbs>
- <https://www.indyweek.com/news/archives/2017/10/17/ferc-approves-atlantic-coast-pipeline-but-nc-deq-can-stop-it-in-its-tracks>

Spineless secrecy - Opinion

- The Recorder – 10/19/17

https://www.abralliance.org/wp-content/uploads/2017/10/Spineless_secrecy-Recorder_editorial_20171019.pdf

State approves pipeline land swaps

- The Recorder – 10/19/17

https://www.abralliance.org/wp-content/uploads/2017/10/State_approves_pipeline_land_swaps-Recorder_20171019.pdf

VA House legislator calls swaps "win-win". VOF says an expectation that conservation easements can protect land from federal government is 'unrealistic'.

Related:

- http://www.dailyprogress.com/newsvirginian/news/state/outdoors-foundation-approves-pipeline-application-for-easements-in-nelson-highland/article_73f87a84-b460-11e7-bfb5-ff3f5e6c8bc5.html
- <http://www.newsleader.com/story/news/local/2017/10/18/pipelines-increasing-certainty-outdoors-foundation-bargains-swap-access-rights-3-parcels/775535001/>

Wilson County voices concern over Atlantic Coast Pipeline

- The Wilson Times – 10/17/17

<http://www.wilsontimes.com/stories/county-voices-concern-over-pipeline.100389>

Wilson County commissioners unanimously passed a resolution Tuesday calling for Atlantic Coast Pipeline officials to be more transparent in their dealings with property owners and local government when it comes to development and safety issues.

Property owners plan to continue fighting after FERC decision

- The Franklin News-Post – 10/18/17
http://www.thefranklinnewspost.com/news/local/property-owners-plan-to-continue-fighting-after-ferc-decision/article_ddbc24d6-b431-11e7-92df-57872cc16ceo.html
 Local landowners are planning the next step after news broke Friday that the Federal Energy Regulatory Commission approved the Mountain Valley Pipeline set to run through Franklin County.

A changing landscape for a power player

- Richmond Times-Dispatch – 10/13/17
http://www.richmond.com/news/special-report/dominion/a-changing-landscape-for-a-power-player/article_d9f31c92-af81-11e7-9355-a7b56f88db9d.html
 Influential utility facing unprecedented scrutiny, opposition.

Regional/Mountain Valley Pipeline, other

FERC's approval of Mountain Valley Pipeline stirs defiance, determination

- The Roanoke Times – 10/14/17
http://www.roanoke.com/business/ferc-s-approval-of-mountain-valley-pipeline-stirs-defiance-determination/article_4b8c75b1-ae8b-57ca-8016-0e4d0dae6de4.html

Fayette commissioner, others object to approval of pipelines

- The Register-Herald – 10/19/17
http://www.register-herald.com/news/fayette-commissioner-others-object-to-approval-of-pipelines/article_4aaefcd1-aofd-5d89-b204-72e5fd279372.html

Politicians react to FERC pipeline certifications

- The Roanoke Times – 10/16/17
http://www.roanoke.com/news/local/roanoke_county/politicians-react-to-ferc-pipeline-certifications/article_f9cbecc5-26a6-54b7-98d2-4f773e2ba8de.html

FERC sidesteps broader issues in approvals of pipelines

- Charleston Gazette-Mail – 10/14/17
https://www.wvgazettemail.com/news/special_reports/marcellus/ferc-sidesteps-broader-issues-in-approvals-of-pipelines/article_e05e33c5-6d1c-5c5f-8ebd-22b1beb91133.html
 In approving 900 miles of new natural gas pipelines through West Virginia, Virginia and North Carolina, federal regulators rejected proposals that they conduct a broader examination of where those projects fit in a national energy policy and sidestepped some major questions about their long-term environmental effects.

Court ruling highlights unanswered questions on Mountain Valley Pipeline

- Charleston Gazette-Mail – 10/17/17
https://www.wvgazettemail.com/news/special_reports/marcellus/court-ruling-highlights-unanswered-questions-on-mountain-valley-pipeline/article_044cd2d7-83ce-5ab3-9567-00bb6e2b92fd.html
 A federal appeals court on Tuesday sent a key water quality permit for the Mountain Valley Pipeline back to the West Virginia Department of Environmental Protection for further review, in a move that highlights the significant questions that remain about the \$3.7 billion project's impacts and whether those impacts will be fully examined by state regulators.

Big Picture:

Yes, Administrator Pruitt, EPA Does Have the Obligation to Protect America from Climate Pollution

- Environmental Defense Fund – 10/19/17
<http://blogs.edf.org/climate411/2017/10/19/yes-administrator-pruitt-epa-does-have-the-obligation-to-protect-america-from-climate-pollution/>
 The head of the Environmental Protection Agency is once again misleading the American people in an effort to avoid doing his job.

Bipartisan group of former FERC commissioners rejects energy secretary's bid to help coal plants

- The Washington Post – 10/19/17

https://www.washingtonpost.com/news/energy-environment/wp/2017/10/19/former-ferc-commissioners-reject-energy-secretary-perrys-bid-to-help-coal-plants/?utm_term=.f3bd8f3056e5

The former commissioners said that Perry was seeking to reverse a quarter century of FERC reforms that have created a marketplace for electric power generators and that many of the coal plants he is aiming to help have no advantage when it comes to reliability.

FERC's Chatterjee Calls for Shorter NatGas Pipeline Permitting Process

- Natural Gas intelligence – 10/18/17

<http://www.naturalgasintel.com/articles/112139-fercs-chatterjee-calls-for-shorter-natgas-pipeline-permitting-process>

The FERC chairman said regulatory uncertainty, created by burdensome delays in the project review process, is problematic for numerous reasons.

Related:

- <https://www.rtoinsider.com/natural-gas-greenhouse-gas-emissions-ghg-77400/>

Project approvals splinter FERC, trigger rare dissent

- E&E News – 10/16/17

https://www.abralliance.org/wp-content/uploads/2017/10/Project_approvals_splinter_FERC_trigger_rare_dissent-EENews_20171016.pdf

Commissioner Cheryl LaFleur, the lone Democrat on the panel, parted with her colleagues. In a dissenting statement, the former chairwoman wrote that she doesn't believe the proposals are in the public interest.

Last Month's Jobs Report Hints at Our Climate-Changed Economy's Future

- Slate – 10/18/17

http://www.slate.com/blogs/future_tense/2017/10/18/could_climate_change_take_your_job_away.html

The war on coal is over. Coal lost.

- The Guardian – 10/16/17

<https://www.theguardian.com/environment/climate-consensus-97-per-cent/2017/oct/16/the-war-on-coal-is-over-coal-lost>

The Trump administration is taking every possible step to burn away our future, but fortunately the transition to a clean energy economy is unstoppable, and many of his party members are coming to grips with that reality.

Related:

- <https://stateimpact.npr.org/pennsylvania/2017/10/18/al-gore-were-getting-close-to-bipartisan-action-on-climate/>

Americans are willing to pay \$177 a year to avoid climate change

- Vox – 10/13/17

<https://www.vox.com/energy-and-environment/2017/10/13/16468318/americans-willing-to-pay-climate-change>