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United States Senate

WASHINGTON, DC 20510-4607

August 24, 2015

The Honorable Norman C. Bay and Commissioners
Federal Energy Regulatory Commission
888 1st Street NE
Washington, D.C. 20426

Dear Chairman Bay and Commissioners Clark, Honorable, Moeller, and LaFleur:

This letter is a compilation of observations regarding Docket #PF15-6-000 – the Atlantic Coast Pipeline (ACP), proposed by Dominion, Duke Energy, Piedmont Natural Gas, and AGL Resources.

I take no position on the underlying question of whether this project should be approved, as that is a choice that requires consideration of a number of technical issues that are best addressed by FERC, not by Congress. However, I have listened carefully to many Virginians along the proposed ACP corridor who have shared concerns with me about this project. These concerns pertain not just to the substance of the project but also to the quality and thoroughness of the public input process by FERC and the applicant companies. In response to what I have heard, I highlight several of the issues that I believe are important for FERC to consider. It is also my hope that the applicants will consider these points as they prepare to file their formal application.

No one disputes that energy infrastructure is necessary for the economy and daily life. However, such infrastructure must be built in as minimally disruptive a way as possible. Since all infrastructure has some degree of impact, federal law charges your agency with managing a complex process 1) to require project builders to make the utmost effort to minimize project impacts, and 2) to empower the public to verify these efforts by ensuring that all relevant information is made available and that there is ample opportunity for public input and comment. Citizens rightly expect that process to be followed to the letter.

In my travels throughout the Shenandoah Valley and elsewhere along the ACP's footprint, I have heard the views of affected property owners, local elected officials, businesses, farmers, organizations dedicated to preserving our natural resources, and numerous other concerned citizens. I have also heard from the applicants and constituents, local governments, and business groups that support the project. The comments below reflect some of the key issues raised multiple times by stakeholders that I believe are particularly important to underscore as you analyze this project.

Process concerns

Several municipalities and citizens groups pressed for extensions of public comment periods and additional scoping meetings, due to a perception that this process is being fast-tracked without appropriate time for input by affected stakeholders.

I believe these calls have arisen because the FERC process has a built-in imbalance. A company wishing to build a pipeline has personnel with deep experience in this complex regulatory process and for whom this is a full-time job. By contrast, citizens with questions about this project are not experts in the energy industry but rather are learning about this project on their nights and weekends. Many live in rural areas and commute great distances to public meetings after a full day's work. Some do not have high-speed internet access. Some are older citizens for whom the FERC eComment online portal is not straightforward to navigate.

It is crucial that no effort be spared to disseminate project information as widely as possible, to make sure that citizen questions are answered quickly and substantively, and to allow ample opportunity for comment – in particular, sufficient time to analyze new information such as new alternative proposed routes.

When these steps are not taken, it contributes to a local perception that the project is a done deal and that FERC and the applicants view the public comment process as a pro-forma, box-checking exercise. I would like to share with you several specific incidents that may be contributing to this impression:

- Constituents brought to my attention a list of errors in the transcripts of the FERC scoping meetings. These were not stray typos but rather hundreds of erroneous words that made large portions of testimony read as nonsensical (for instance, “karst” was transcribed as “cars.”) To the citizens who took time out of an evening to offer public comment – in many cases after waiting a long time to speak – the discovery of these errors suggested that FERC was not taking public testimony seriously.
- As I have outlined in previous correspondence with FERC, scoping meetings in Nelson and Augusta Counties did not provide fair opportunity for people of different views to testify. According to press and eyewitness reports, a number of organized ACP supporters arrived several hours early and occupied the bulk of the speaking slots, leaving those who showed up at the advertised start time to wait for hours. While public meetings cannot be of unlimited duration, it is unfair to allow advocates of any position to “pack” meetings. There are effective protocols that can be used to alternate between factions to ensure a balance of views in a limited amount of time.
- Members of the Augusta County Board of Supervisors and Augusta County Service Authority met with the applicants and provided the company with a list of questions, which these members say have not been answered to date.
- *The Recorder*, the local newspaper of Bath and Highland Counties, submitted questions to the applicants on August 5, 2014, and indicates that it has yet to receive a response.

- The Buckingham County advocacy group Friends of Buckingham alleges FERC informed them there would be a presentation by the applicants on the size and impacts of the proposed Buckingham compressor station before the scoping meeting, and that no such presentation was held.
- In some cases, companies, contractors, or subcontractors seeking to gain survey access to private property have not been following proper notification requirements before suing to gain access to land.

Project concerns

Environmental impacts: This area of Virginia is a mountainous, forested, and largely rural area in which agriculture and outdoor tourism are predominant economic sectors. The ACP's corridor crosses karst geologic formations and water resources, which many Virginians in this region find to be of deep concern.

- Questions have arisen as to whether technology to build safely on karst topography has been demonstrated (and if so, where and how).
- Some believe there are insufficient measures in place to minimize the risk of local well contamination and impacts to drinking water.
- In mountainous areas of the route, citizens are asking about erosion mitigation and evacuation routes near schools. One citizen pointed out that the Commonwealth's hazardous materials evacuation plan recommends avoiding karst areas.
- Citizens are asking how the ACP will be built to safely cross rivers.

Any impacts on natural resources are also impacts on the regional economy, including on property values and tourism revenue. For instance, I have received concerns from Wintergreen Resort – the largest employer in Nelson County, with some 1,000 seasonal employees and up to 400,000 annual visitors – about how the ACP will affect visitation numbers, property value, and planned future developments. Through the potential impacts on both businesses and individuals, many residents feel that this region is bearing all the environmental risks and potential economic impacts from carving a new right-of-way through unspoiled rural green-field area, while the applicants and the recipients of this gas demand elsewhere are receiving all the benefits. Accordingly, questions have been raised as to the following:

- Whether FERC requires or encourages reroutes of the pipeline to avoid land tracts under conservation easement, which property owners understood would be protected in perpetuity, and for “century” farms, which have been in family ownership for more than 100 years.

- The degree of information-sharing and consultation that has taken place among FERC, the interested companies, and the National Park Service, given that the route would have to cross the Appalachian Trail.
- Whether protections are in place for endangered species, such as the cow knob salamander, and for caves, which could be impacted during construction blasting.

Community benefits: Municipalities along the proposed ACP route wish to better understand the potential benefits of the project in terms of opportunities to tap into this new gas supply. The publicly cited data indicate that the volume demand for tapping into the ACP is on a scale of magnitude large enough that only an entity the size of a city – not a business or neighborhood – could potentially benefit from this resource.

For that reason, some communities feel that their ability to tap into the pipeline for local use has been overstated. They would like to know what level of gas demand is needed to justify building a distribution branch of the ACP, what steps would need to be taken to make this happen, and approximately how much it would cost to build the transfer station.

In addition, there is confusion about whether or what portion of the gas traveling through the pipeline is likely to be exported. Citizens have reported conflicting information being given from industry and FERC representatives during public meetings. To be clear, I believe LNG export can make sense on a strategic, case-by-case basis to reduce the world's dependence on hostile energy states like Iran and Russia. But whatever views one has on this issue, the people in this area of Virginia bear the potential risks of this infrastructure and deserve to have accurate information on this point.

Cumulative impacts: The Atlantic Coast Pipeline is one of four natural gas pipeline projects proposed in roughly the same region of Virginia. While all are at different phases of the regulatory process, two – the Mountain Valley Pipeline (NextEra/EQT Energy) and the Appalachian Connector (Williams Co.) – appear to travel along a nearly identical route. A third – the WB Xpress (Columbia) – is an expansion of a current line, located not far from the ACP route and some 90 miles north of the other projects.

One of the most frequent concerns Virginians have shared with me is the degree to which FERC analyzes individual projects within the larger regional context – in other words, if the new capacity brought online by the ACP necessitates a certain level of impact, whether four new projects necessitates four times the impact. It is important that the ACP be measured side-by-side with the impact of multiple new pipeline rights-of-way in this rural, largely agricultural and forested region.

I have encouraged the applicants for the ACP and for other pipeline projects to explore co-location of right-of-way to the greatest extent possible. In analyzing other pipelines approved in recent years across the country, it appears at this stage that the ACP's degree of co-location with existing rights-of-way – in the range of 5-10% of its mileage – is substantially lower than for other similar pipelines. Understanding that co-location is driven by geography and development patterns that vary by region, it is important that FERC analyze whether the applicants have taken

every reasonable measure to minimize the need for heavy construction on previously undeveloped land.

To better assess whether such efforts have been adequately taken, citizens are asking whether a programmatic environmental impact statement (EIS) for all four projects would better capture the environmental impacts throughout the region than four separate ones. While I understand that FERC has rarely done this in the past, I would be interested in whether the agency does or does not believe it would be worthwhile in this case, and why.

Conclusion

I recognize FERC's challenging responsibility of ensuring that America's energy system has the transmission capacity to run reliably, while permitting that infrastructure in accordance with the safety of natural resources and the rights of Americans not to have their property taken without overwhelming public interest. These are complex considerations in which there is not always a clear line. For that reason, as stated before, I do not have a position on this project, as I strongly believe that infrastructure decisions should be determined through expert analysis of all the relevant technical and economic factors, and not on a political or partisan basis.

What I do strongly encourage is that FERC painstakingly follow the system we have in place for evaluating infrastructure. Permitting a pipeline should involve an exhaustive process of eliminating all but the least disruptive construction options. The people whose livelihoods may be affected by a project should have ample opportunity to gather information, get their questions answered, and analyze alternatives – on a timeline conducive to participation by people for whom energy pipeline permitting is not a professional occupation. In short, simply having a public comment process is insufficient if that process is not easily accessible to the public.

Thank you for your attention to the issues raised in this letter. I appreciate your attention to this matter.

Sincerely,

Tim Kaine