

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Atlantic Coast Pipeline LLC (Docket Nos. CP15-554-000; CP15-554-001)
Dominion Energy Transmission, Inc. (Docket No CP 15-555-000)

**MOTION TO INTERVENE AND COMMENT IN OPPOSITION TO
ATLANTIC COAST PIPELINE LLC & DOMINION ENERGY
TRANSMISSION INC.'S
REQUEST FOR EXTENSION OF TIME BY:
THE
BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE
AND ITS CHAPTERS AND MEMBERS IN VIRGINIA
CONCERN FOR THE NEW GENERATION
PROTECT OUR WATER &
NO ACP
AND IN NORTH CAROLINA:
CUMBERLAND COUNTY CARING VOICES
NASH STOP THE PIPELINE
NO PIPELINE JOHNSTON COUNTY
CONCERNED STEWARDS OF HALIFAX COUNTY
WILSON COUNTY NO PIPELINE**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission (FERC) Rules of Practice and Procedure, now comes Blue Ridge Environmental Defense League (BREDL) and its chapters, Protect Our Water, Concern for the New Generation, No ACP (Virginia), Cumberland County Caring Voices, Nash Stop the Pipeline, No Pipeline Johnston County, Concerned Stewards of Halifax County, and Wilson County No Pipeline (North Carolina); collectively the “Environmental Justice Groups” to move to intervene and submit comments and complaint in opposition to the Atlantic Coast Pipeline, LLC (ACP) and Dominion Energy Transmission, Inc. (Dominion), request to FERC to extend its Certificate of Convenience and Public Necessity for a two-year period to allow ACP to construct and put in-service its pipeline and necessary supporting industrial facilities.

I INTEREST OF PROPOSED INTERVENORS

The Blue Ridge Environmental Defense League and its chapters, Concern for the New Generation, Protect Our Water and No ACP in Virginia, Cumberland County Caring Voices, Nash Stop the Pipeline, No Pipeline Johnston County, Concerned Stewards of Halifax County, and Wilson County No Pipeline in North Carolina, are 501(c)(3) non-profit organizations dedicated to protecting and preserving resources in Virginia, North Carolina, and the southeastern United States. The ACP, if ever completed, would cause devastating degradation to the resources these groups seek to protect and preserve. Construction performed before the work stoppage in December 2018 caused considerable destruction. The requested extension of two years would allow environmental and economic devastation to privately owned land, State and Federally owned properties, as well as wetlands and waterways along the path of the ACP. In addition, a disproportionate impact of that devastation would occur in communities where members of the Environmental Justice Groups live and work. It is therefore appropriate for the Environmental Justice Groups to participate in this intervention and for it to be considered in the public interest.

II COMMENTS IN OPPOSITION/FAILURE OF DUE DILIGENCE

ACP/Dominion's failure to complete its due diligence—listening to communities, to experts, to the agencies from whom it needed permits—is the reason it has been forced into the position of seeking an extension of two (2) years for the Certificate of Public Convenience and Necessity. ACP claims in its request for the extension that the problems it has faced were *unforeseeable* are laughable. We believe ACP/Dominion has a high bar to achieve to prove its permitting issues were either unforeseeable or unavoidable. Instead we will clearly show ACP/Dominion's problems were completely avoidable if only it had done the work required competently.

At present, ACP is missing a total of eight (8) permits and has not completed any construction of the pipeline since December 2018. Before the stop work, ACP completed little construction. Only tree felling occurred in some areas of Virginia, while less than 10 miles of pipeline was constructed in North Carolina. The problems ACP has faced are, simply stated, due to its arrogance and

inappropriate, sloppy work which caused self-inflicted wounds which resulted in Federal courts and/or agencies vacating, remanding, or otherwise withdrawal or invalidation of those eight (8) permits.

The missing permits are:

- 1) Special use permit and right-of-way grant from the US Forest Service (USFS).
- 2) Biologic statement from the US Fish & Wildlife Service (though we believe this has been submitted but has not been made public).
- 3) Right-of-way permit from the National Park Service (NPS).
- 4) Virginia air pollution permit for Compressor Station 2 sited in the Union Hill, Buckingham Co., VA community.
- 5) Clean Water Act authorization from the US Army Corps of Engineers (USACE) In Virginia
- 6) Clean Water Act authorization from the US Army Corps of Engineers (USACE) in West Virginia
- 7) Clean Water Act authorization from the US Army Corps of Engineers (USACE) in Pennsylvania
- 8) Clean Water Act authorization from the US Army Corps of Engineers (USACE) in North Carolina

a) Easements and/or Condemnations

In addition to these missing permits, five (5) years after its land agents were sent into communities to negotiate easement agreements, ACP has failed to negotiate many signed easements with landowners.

ACP/Dominion sued many landowners for early access or quick take for the easements, but in some cases, Federal courts ruled against ACP/Dominion. Why? ACP/Dominion could not present evidence indicating when or if the eight (8) missing permits might be obtained. Responsibility clearly lays at the feet of ACP/Dominion and its agents for the rulings against them. In its attempts to cut corners and its refusal to do the work required to receive legitimate permits, ACP ended up with permits that could not possibly meet the court's scrutiny.

To illustrate ACP's lack of due diligence in the permitting process, ACP/Dominion had to repeatedly send requests to landowners for access to survey private land even though State law in Virginia and North Carolina allow ACP survey access without permission. The documents initially sent to landowners in May 2014 were sent by Dominion under the entity known to the public as the Southeast Reliability Project. By September 2014, the project had become the Atlantic Coast Pipeline with several partners including Dominion Energy and Duke Energy. Dominion attempted to continue to use those original May 2014 Southeast Reliability Project requests to landowners as the documents legally required for the Atlantic Coast Pipeline to access property for survey, until a Suffolk, Virginia Circuit Court intervened and required Dominion to follow the law and send documents requesting survey from the proper entity. Additionally, when ACP/Dominion moved the location of the crossing of the Blue Ridge Parkway and Appalachian Trail from Afton, VA to its current location at Wintergreen, VA, ACP it quickly sent out letters to the new landowners on the rerouted path without all legally required information included in the letters. This caused them to have to repeat the process to those same landowners.

Another example of ACP's ineptness occurred when they rerouted another section of the proposed path of the pipeline near Route 56 east of Shipman, VA but still filed suit against 14 landowners who were no longer on the route. When confronted with the facts and their errors, ACP was forced to admit it had forgotten to change its maps and notify its attorneys of the route change.

ACP's inability to complete mundane administrative tasks caused a significant loss of time. Incomplete, incorrect, and documents required to access property which lacked the proper notifications under the law for survey ultimately meant they could not and still cannot complete tree felling in many areas. These problems were self-inflicted by ACP/Dominion, not some unforeseeable unavoidable issue it could not have foretold.

b) Heir Properties & Environmental Justice

Many of the families along the route of the proposed ACP are having their property taken through eminent domain proceedings in Federal courts. FERC's Environmental Impact Statement (EIS) indicates that as many as 58% of the census blocks through which the ACP would be built could be environmental

justice (EJ) communities. Some of the Environmental Justice Group members are part of what is commonly referred to as “heir” property owners. “Heir” properties are properties which were at one time owned by an ancestor who died intestate...with no will. Today the descendants or “heirs” of that ancestor own the property together or as tenants in common with no one owner having a controlling interest in the property. These heirs might live all over the country or even in other countries. Until ACP/Dominion came calling, some heirs may not even have known they owned an interest in the property and may never have set foot on it. Other owners may have a cultural attachment because they live on the property, or in the community currently, or lived on the property with a parent or grandparent as a child. This puts these landowners at cross purposes and at a disproportionate disadvantage in presenting their cases before the courts in receiving just and fair compensation for their interests in these properties. Land agents will often seek out those owners in common who live elsewhere first, offer them payment for the desired easement, leaving those with cultural attachments to the properties feeling they have no choice but to sign the easement. However, it is important to note that someone or some of the heirs together have paid taxes on these properties through the generations to keep the properties in their families. Most often family members do not have the money to pay thousands of dollars for appraisals so that they may present their cases in court.

The Environmental Justice Group Concern for the New Generation completed a study, “Union Hill: Real Property, Racism and Environmental Justice.” The study looked at properties in their community on which the ACP would be built. Of the 15 properties studied, 11 were minority owned properties. Of the 11 minority owned properties, eight (8) were owned by African Americans, one by a Latinx, and two by those of native American descent. Seven or 63% of the 11 minority owned properties are heir properties owned by legacy families. We define a legacy family as one whose ancestor purchased or acquired the property after the Civil War ended.

Siting toxic, polluting industries in locations with high numbers of heir properties perpetuates the historical abuse of minority communities being forced to live where high levels of toxic emissions exist. ACP/Dominion knew about the Union Hill community but ignored the facts. Was this foreseeable or avoidable by Dominion? Of course, it was.

To fight the groundswell of opposition, Dominion created a Community Advisory Group (CAG) which included members of the Union Hill community. The CAG met several times in 2015 and 2016. Did Dominion listen then? No. They did allow the community to choose paint colors for the compressor station buildings. *That was the input Dominion sought from the community.*

ACP/Dominion purchased two pieces of property in Buckingham County for its compressor station. One which was 148 acres in a predominately white neighborhood and one that was 68 acres in the historical community of Union Hill. These properties are within a few miles of each other. Could Dominion have avoided the Environmental Justice heir property issue? Yes. After 5 years of seeking easements, ACP/Dominion still lacks signed easements from heir property landowners in Union Hill.

c) Air Permitting & Environmental Injustice

While we realize FERC does not approve pipeline construction rules, it does approve pipeline routes. The route chosen by ACP/Dominion, has a high number of census blocks designated as environmental justice communities, and should have raised a red flag. We see the initial route selection problem beginning with The Pipeline Hazardous Materials & Safety Administration's construction rules and class designations. Those class designations incentivize developers to choose low wealth and marginalized communities for their pipeline routes and compressor stations because pipelines are cheaper to build in Class 1 communities. However, those facts do not dissuade us from asking you to consider additional information regarding the Union Hill community and ACP/Dominion's refusal to acknowledge its existence and significance early in the permitting process.

At every opportunity, members of the Union Hill community and their allies presented either written or oral comments regarding the historical significance of this community settled by freed slaves. Environmental Justice Group chapter, Concern for the New Generation, held its own public hearing with a certified court reporter which allowed community members to testify outlining the historical nature of the community and the ethnicity of its citizens. This document was presented to the Virginia Department of Environmental Quality (VADEQ) during the permitting process. Members attended local, state, and

federal meetings and public hearings always making the case that Union Hill was an environmental justice community. The Governor's Advisory Committee on Environmental Justice submitted a report to the Governor and VADEQ stating these same facts and going so far as to say siting the ACP Compressor Station 2 in Union Hill was "environmental racism." Anthropologist Dr. Lakshmi Fjord completed a peer reviewed household study finding that 83% of the community was African American and that 30% of those living in the community today are descendants of the freedmen who settled Union Hill after the Civil War. Yet ACP/Dominion continued to ignore the truth of the facts presented.

The VADEQ Air Compliance and Permitting Division issued a draft air quality permit for the ACP's Virginia compressor station sited for the historic Union Hill community of Buckingham County, VA. The State Air Pollution Control Board SAPCB held a hearing on September 11, 2018 in Buckingham County and a public hearing on November 8-9, 2018 in Richmond where testimony was given, repeatedly, about EJ issues. The SAPCB decided to defer its decision on the air permit based on site suitability and environmental justice concerns until December 10, 2018. Ultimately, even with the peer reviewed EJ analysis completed by anthropologist Dr. Lakshmi Fjord and other environmental justice concerns presented to the SAPCB, in January 2019 it issued an air permit for the proposed compressor station.

The ACP/Dominion air permit was challenged in the Fourth Circuit and remanded back to VADEQ for concerns regarding environmental justice on January 7, 2020. In an effort to quell the uproar it was facing, Dominion representatives announced during its comments at the November SAPCB hearing, a \$5.2 million Union Hill Community Fund which would be available to the community if the pipeline and compressor station were built. While it did not acknowledge that Union Hill was, in fact, an EJ community until oral arguments at the Fourth Circuit in October 2019, they certainly realized they had a problem at the SAPCB hearing in November 2018.

Was this challenge to the air permit foreseeable or avoidable? Simply put, yes. ACP/Dominion chose throughout the process to ignore the facts regarding Union Hill costing them time and money. Six years after announcing this project, Dominion still does not have this permit.

d) US Forest Service Permitting

Dominion also showed its arrogance and cost itself precious time during the process of completing soil surveys in the Monongahela and George Washington National Forests when they misrepresented that soil surveys were completed by soil scientists certified by the US Forest Service (USFS). One soil scientist listed as being on site said she had never been contracted by ACP/Dominion, had never completed surveys for ACP and had never even been on the property it claimed she surveyed. BREDL submitted to FERC an intervention out of time regarding this incident on November 6, 2015 which is a part of the current ACP record.

From the outset, the USFS repeatedly asked ACP/Dominion to pursue alternative routes which did not include Forest Service lands. While Dominion after months of wrangling did change its original route because the Forest Service rejected it, the new route simply created new problems. Rather than listening to the advice of the Forest Service, Dominion plowed ahead, challenging the Forest Service to quickly issue the permit. In the end, ACP/Dominion left itself open for the permit to be challenged in the Fourth Circuit in Richmond, VA. While the US Supreme Court recently ruled in favor of ACP regarding the crossing of the Blue Ridge Parkway and Appalachian Trail, other issues with the permit remain unanswered that were not a part of the Supreme Court ruling. This permit was also remanded back to the Forest Service on the basis that it must consider alternate routes which did not include Forest Service lands...the initial request made by the Forest Service of ACP/Dominion. Was this eventuality foreseeable and avoidable by ACP/Dominion? Certainly, it was, but ACP/Dominion consistently chooses to bully and attempt to exercise its political power to achieve its goals, rather than listen to the experts. Today, six (6) years after announcing this project, ACP/Dominion still does not have a valid permit from the US Forest Service.

e) Construction Violations

A major concern of the Environmental Justice Groups has been how construction could be completed while maintaining and holding the soil on the steep slopes and narrow ridges in the mountainous regions in West Virginia and Virginia. These concerns have been proven out during the construction of the similarly sized Mountain Valley Pipeline which would traverse much the same type mountainous areas. The Commonwealth of Virginia ended up suing MVP for over 300

violations and reached a \$2 million settlement with them for those violations. The ACP would traverse much the same type of terrain if it is ever built. Even though very few miles of the ACP have been constructed, it is surprising that there have been 15 slope failures in West Virginia along the route of the ACP. It has also been cited for violations in Doddridge and Lewis Counties, WV. In an article dated 19 August 2019, Kallanish Energy reported PHMSA had cited ACP:

“The company failed to follow written specifications or standards in ditching and laying pipe, the agency said. Dominion Energy Transmission was ordered to correct the problems. The problems were discovered last December during federal inspections, but the agency released a four-page warning letter to the pipeline on July 25 E&ENews reported.”

Whether administrative paperwork or construction of the project, ACP/Dominion has shown us it cannot complete the job appropriately or safely.

f) Need has diminished

ACP/Dominion claimed it needed this new pipeline to supply its Brunswick and Greensville natural gas electric generation plants even though they had signed contracts with Williams Transco to supply gas to those plants. They also claimed need because they would build new natural gas electric generation plants in Virginia which would require the gas ACP would carry. In 2020, Virginia legislators passed the Virginia Clean Economy Act which require Virginia move to renewable energy. Dominion’s own 2020 Integrated Resource Plan presented to the Virginia State Corporation Commission in May does not include the gas plants it was planning when it applied to FERC for the ACP. The need Dominion claimed has diminished.

III CONCLUSION

Dominion Energy and Duke Energy wield much power in the Commonwealth of Virginia and North Carolina. The companies have used their political power to pressure and bully to complete this project and when that did not work, it attempted to use its economic power to try to buy communities into submission. However, even with all the political and economic power available to them, and their willingness to wield it against the people, they could not complete their

project within the time frame allotted by FERC. Dominion had sufficient time, but they chose to cut corners, mislead agencies and ignore the facts on the ground. ACP/Dominion proved themselves inept and incapable over the last six years, not because the communities along the route challenged them, but because they, themselves refused to do the detailed, tedious work required of them. While Dominion claims these challenges were unforeseeable and unavoidable, it was Dominion's arrogance abuse of its power that puts them in this position. We ask you to decline ACP/Dominion's request for a two-year extension.

Any correspondence should be sent to:

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