



ABRA Update #173 – March 22, 2018

Federal Court Dismisses Challenges to FERC Decision on ACP

Legal challenges to the October 13, 2017 the approval and permits for the Atlantic Coast Pipeline (ACP) by the Federal Energy Regulatory Commission (FERC) were dismissed on March 21 by the U.S. District Court of Appeals for the 4th Circuit.

On January 29, Appalachian Mountain Advocates (Appalmad) and the Southern Environmental Law Center (SELC) sued FERC on behalf of 11 groups (most of them ABRA members) challenging the agency's decision to approve the ACP. On March 8, a second lawsuit was filed by SELC and Appalmad against FERC under the All Writs Act to stop pipeline construction. The All Writs petition was filed as an alternative basis on which the Court could stop the project, if it determined that the direct challenge to the FERC approval was premature.

The panel rejected the All Writs argument and apparently accepted FERC's position that it could indefinitely postpone a decision on the merits of our rehearing request to the agency even though the pipeline goes forward (known as a "tolling order"). Thus, in the Court's view, it does not have jurisdiction to hear the case now, and the plaintiffs must wait until FERC issues an order on the rehearing request. It is unclear when the agency will act. The FERC certificate can still be challenged once the agency makes its final decision. Until then, other pipeline permits will be subjected to litigation.

ABRA Members Voice Opposition to ACP Request to Extend Tree Felling

Last week's request by Dominion Energy Transmission, Inc. (DETI) for a two-month extension of the deadline for felling trees for the Atlantic Coast Pipeline (ACP) has had vociferous opposition. DETI's March 15 letter to the Federal Energy Regulatory Commission (FERC) said it would be "unable to complete the scheduled tree felling . . . before the existing time-of-year restrictions go into effect." Tree felling was to end March 15 in Virginia and April 1 in West Virginia and North Carolina, in accordance with recommendations in the Environmental Impact Statement for the ACP.

On March 17, the Southern Environmental Law Center and Appalachian Mountain Advocates, on behalf of their clients with pending rehearing requests before FERC (most of whom are ABRA members), filed [a letter of opposition to the Dominion request](#). That filing of opposition has been joined by numerous other communications to FERC urging the rejection of the DETI request that the tree felling deadline be extended to May 15.

At this writing, FERC has not yet responded to the DETI request. However, a recent policy change by the U.S. Department of Interior, narrowing the application of federal regulations governing migratory birds, may become a factor in the decision. Interior's Fish and Wildlife Service has already weighed in with an opinion on another pipeline project that is seeking FERC approval for a tree felling deadline extension. More on that development [here](#).

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Investigation Requested of Potential Noncompliance by ACP

[A request was filed March 22](#) on behalf of ABRA with the Federal Energy Regulatory Commission (FERC) to investigate potential violations by Atlantic Coast Pipeline (ACP) of the Commission's Certificate and Virginia's water quality certification. Aerial photographs taken earlier in March by ABRA's Compliance Surveillance Initiative showed what appears to be substantial construction work in an area of Augusta County, near the site from which ACP proposes to bore through the Blue Ridge Mountains. The photographs show new and improved roads, new bridges, and what appear to be equipment parking and staging areas. [Last week's ABRA Update](#) reported on the incident report.

The activities do not appear to have been authorized under any of the limited Notices to Proceed FERC has issued for the ACP, which allow at this time only tree cutting by non-mechanized means. The ABRA request explains that these actions will impact water quality and that, since the State of Virginia has not approved for the ACP erosion and sediment control and stormwater plans, the project's water quality certification is not effective. Therefore, possible land disturbance, changes to stormwater flows and other effects must not be allowed. The submittal to FERC also notes that ACP's weekly status reports have not provided notice of any of these activities and that environmental compliance reports indicate these sites have not been inspected.

The filing asks FERC to report on its investigative proceedings and findings to public and that it not invoke regulatory provisions to keep this information from citizens.

Stream Monitoring Webinar to Be Held March 27

A [Volunteer Pipeline Visual Assessment Program](#) has been developed by Trout Unlimited and the West Virginia Rivers Coalition to support and train volunteer citizen observers to identify, document and report pollution incidents associated with large-scale pipeline development. A free webinar on the program for West Virginians is scheduled for next Tuesday, March 27, from 7 to 8:30 pm. To participate, [register here](#). An earlier webinar for Virginia residents was held on March 13.

The webinar will instruct volunteers about erosion control best management practices used in pipeline development, specific examples of pollution to look for, and how to best document those problems. After the webinar, volunteer observers will be able to report pollution incidents to TU and WV Rivers. [To learn more, visit the program webpage.](#)

For more information, please contact Jake Lemon, TU's Eastern Angler Science Coordinator, at jlemon@tu.org.

In the News:

Local/Atlantic Coast Pipeline

DEQ Takes Enforcement Action Against Atlantic Coast Pipeline

- The Roanoke Star – 3/16/18

<http://theroanokestar.com/2018/03/16/deq-takes-enforcement-action-against-atlantic-coast-pipeline/>

The Notice Of Violation identifies violations on 15 separate sites resulting in an estimated 0.84 acres in impact to wetlands and streams.

Monitors Mobilize Along ACP Route

- WVTF RadioIQ – 3/19/18

<http://wvtf.org/post/monitors-mobilize-along-acp-route-0>

More than 160 people have volunteered to keep an eye on construction crews, and those monitors are already mobilizing and calling attention to possible violations in three counties.

Court Halts Pipeline Tree Cutting, Requires Full Review on Historic VA Property

- 3/21/18

<http://www.appalmod.org/2018/03/21/court-halts-pipeline-tree-cutting-requires-full-review-on-historic-va-property/>

Developers want more time for pipeline tree clearing

- The Herald-Sun – 3/16/18

<http://www.heraldsun.com/news/state/article205514604.html>

Related:

- <http://wvtf.org/post/bird-lovers-protest-dominions-tree-cutting-plan>

North Carolina tribes fear impact of Atlantic Coast Pipeline construction

- Energy News Network – 3/21/18

<https://energynews.us/southeast/north-carolina-tribes-fear-impact-of-atlantic-coast-pipeline-construction/>

Left out of the formal permitting process, North Carolina's Lumbee Tribe and others seek a voice before pipeline construction crosses their land and waters.

Atlantic Coast Pipeline can't enter some private properties, federal judge says

- The News & Observer - 3/21/18

<http://www.newsobserver.com/news/business/article206063969.html>

A federal judge has taken the unusual step of barring the energy consortium from clearing trees on two rural homesteads.

Regional/Mountain Valley Pipeline, other

New citizen monitoring group to watch for violations during pipeline construction

- The Roanoke Times – 3/18/18

http://www.roanoke.com/news/virginia/new-citizen-monitoring-group-to-watch-for-violations-during-pipeline/article_757b8806-2440-5baf-90b9-b00cb4abcd87.html

Mountain Valley Watch will act as a citizen monitoring group to ensure the Mountain Valley Pipeline construction is done safely and legally.

Appellate court rules not to suspend Mountain Valley Pipeline authorization

- WV News – 3/21/18

https://www.wvnews.com/news/wvnews/appellate-court-rules-not-to-suspend-mountain-valley-pipeline-authorization/article_377ef5b8-950f-59d1-bf8f-1a27eb93411.html

The U.S. Fourth Circuit Court of Appeals has ruled against environmental groups that were seeking immediate suspension of federal authorization for the Mountain Valley Pipeline. The groups had argued that an immediate halt is necessary because it could have environmental effects occur during construction.

W.Va. judge denies injunction to remove pipeline protesters from trees

- The Roanoke Times – 3/20/18

http://www.roanoke.com/business/news/w-va-judge-denies-injunction-to-remove-pipeline-protestors-from/article_4b49e70d-5f23-505b-be51-d59427a21acc.html

Poor attention to detail proves costly to MVP.

Related:

- <http://www.journal-news.net/news/local-news/2018/03/monroe-judge-reverses-decision-lifts-tree-sitter-injunction-in-mvp-pipeline-case/>

The imminent pipeline danger to the Greater Newport Historic District

- The Roanoke Times – 3/18/18

http://www.roanoke.com/opinion/commentary/the-imminent-pipeline-danger-to-the-greater-newport-historic-district/article_20c15dc6-59bd-532c-a051-deb607f9431e.html

Northam adds powers to protect Virginia's clean water ahead of pipeline construction

- WTKR News – 3/18/18

<http://wtkr.com/2018/03/18/northam-adds-powers-to-protect-virginias-clean-water-ahead-of-pipeline-construction/>

According to the Officer of the Governor, SB698 and SB699 establish processes in state law to allow the Virginia Department of Environmental Quality (DEQ) to issue a stop work order on all or part of land-disturbing activities associated with natural gas pipeline construction if DEQ determines those activities have caused, or will imminently cause, a substantial adverse impact to water quality.

Big Picture:

Report: Coal's tipping point near, but climate goals are not

- The Washington Post – 3/21/18

https://www.washingtonpost.com/national/energy-environment/report-coals-tipping-point-near-but-climate-goals-are-not/2018/03/21/180669be-2d66-11e8-8dc9-3b51e028b845_story.html?utm_term=.f45e97ca1710

Coal's dominance as the fuel of choice for generating electricity has been slipping as cheap natural gas and renewable energy sources challenge its decades-long reign, but the pace of decline is still too slow to meet the goals of the Paris climate accord.

Related:

- <https://www.usnews.com/news/top-news/articles/2018-03-22/global-carbon-emissions-hit-record-high-in-2017>

Natural Gas Under Assault in Some States After Brief Reign at the Top

- Wall Street Journal – 3/18/18

<https://www.abralliance.org/wp-content/uploads/2018/03/Natural-Gas-Under-Assault-in-Some-States-After-Brief-Reign-at-the-Top-WSJ-3-19-18.pdf>

Climate and pollution fears and aversion to future "stranded assets" largely to blame...as are renewables that continue to drop in price.

Pipeline Stocks Plunge After FERC Kills Key Income-Tax Allowance

- Bloomberg – 3/15/18

<https://www.bloomberg.com/news/articles/2018-03-15/pipeline-stocks-plunge-after-ferc-kills-key-income-tax-allowance>

Many publicly-held pipeline systems or companies are structured as master-limited partnerships, or MLPs. Because MLPs are pass-through entities that pay no federal taxes, investors in them can get a better after-tax return than by investing in conventional corporations.

Congress' spending deal rejects Trump's proposed EPA, energy cuts

- Washington Examiner – 3/21/18

<https://www.washingtonexaminer.com/policy/energy/congress-spending-deal-rejects-trumps-proposed-epa-energy-cuts>

US electricity use drops, renewables push fossil fuels out of the mix

- ARS Technica – 3/20/18

<https://arstechnica.com/science/2018/03/renewables-conservation-start-pushing-fossil-fuels-off-the-us-grid/>

Combined, renewable sources produced over 18 percent of the US' electricity last year.

Renewables supply 25% of global power in 2017 – IEA

- RenewablesNow – 3/22/18

<https://renewablesnow.com/news/renewables-supply-25-of-global-power-in-2017-iea-606070/>

Many hope their fight against the project will spur similar protests targeting pipelines across the United States and Canada, particularly those routed near Native American land

In coal country, net zero energy nears cost parity

- GreenBiz – 3/19/18

<https://www.greenbiz.com/article/coal-country-net-zero-energy-nears-cost-parity>

This is GOOD news!