

THE CASE AGAINST THE ATLANTIC COAST PIPELINE

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THE ATLANTIC COAST PIPELINE SCHEME

- The Atlantic Coast Pipeline (ACP) is a proposed 604-mile natural gas pipeline that would run from West Virginia to Virginia and North Carolina. Dominion Energy and Duke Energy are the primary owners of the project, and Dominion is responsible for its construction.
- The ACP is not the result of arms-length dealing between independent companies. Dominion and Duke own both the pipeline builder and the electric utilities that will use the pipeline.¹ The Federal Energy Regulatory Commission (FERC) relied exclusively on the contracts between these affiliated companies as proof that the project was needed.²
- The guaranteed yearly profit for ACP developers is 15%, a rate higher than for any other energy project.³ Dominion and Duke plan to charge their electricity customers for the cost of building the pipeline *and* the 15% yearly profit.⁴ Originally projected at \$4.5 billion, expected project costs have ballooned to over \$7 billion.⁵
- This scheme will generate a long-term, low-risk revenue stream for Dominion and Duke shareholders—even if the pipeline is never used.⁶

AN OBSOLETE PROJECT

- New evidence shows that the project is *not* needed to run power plants in Virginia. In 2018 and again in 2019, regulators found that Dominion already owns enough pipeline capacity to serve its existing power plants.⁷ Also in 2018, regulators rejected—for the first time ever—Dominion’s Integrated Resource Plan, finding that the company’s demand projections “have been consistently overstated.”⁸ Dominion’s revised Plan relies on clean, low-cost solar power.⁹
- The market is already pushing utilities away from gas-fired generation. Dominion recently acknowledged that it would not build new combined-cycle gas plants because solar power “offer[s] plentiful and inexpensive electricity.”¹⁰
- Even if demand for gas-fired power grows, the existing pipeline system can meet it. Since late 2018, two expansions of existing pipelines—the Atlantic Sunrise project and the WB XPress project—have offered more capacity into Virginia and North Carolina than the ACP will. Most importantly, this capacity *is available for Dominion and Duke*.¹¹
- According to two FERC commissioners, the ACP is not in the public interest.¹²

SELF-INFLICTED PERMITTING PROBLEMS

- Since May 2018, federal courts or the federal agencies themselves have vacated or suspended seven permits required for ACP construction.¹³ The lack of necessary permits forced Dominion and Duke to halt all ACP construction indefinitely in December 2018.¹⁴
- The ACP’s permitting problems are entirely self-inflicted. The route—across a national park; two national forests; and the steep, forested mountains of the central Appalachians—poses serious environmental problems and has been unduly risky from the beginning.
- Dominion and Duke plan to put an ACP compressor station in the historic, African-American community of Union Hill, Virginia, which was founded by Freedmen and Freedwomen after the Civil War. Descendants of those founders still live there today.¹⁵
- Dominion tried to use politics and influence to get ACP permits.¹⁶ Acting at the company’s request, political appointees applied intense pressure on federal agencies to authorize the pipeline over the objections of agency scientists and engineers.¹⁷ That approach backfired when a federal court reviewed those permits.
- The ACP’s certificate from FERC—the project’s central approval—is still the subject of litigation in federal court. That case may expose even more problems for this project.

(Over, please)

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- FERC has not approved ACP construction in Virginia, and Dominion and Duke have installed less than 6% of the entire project, mostly in West Virginia.¹⁹
- Despite the ACP's highly uncertain future, property owners have forfeited their land in eminent domain proceedings, and Dominion and Duke have incurred almost \$3 billion in costs.²⁰

CONGRESS: NO SPECIAL TREATMENT FOR THE ACP

- In December 2018, the Fourth Circuit vacated a permit from the U.S. Forest Service for the ACP, ruling that the agency did not have legal authority to allow the pipeline to cross the Appalachian Trail.²¹ Dominion and Duke now want Congress to change the law. That issue is now before the United States Supreme Court.
- Congress should not inject itself into the ongoing review of this highly controversial project at the agencies and in the courts. The ACP's final route is *unknown* at this point. The Fourth Circuit ruled that the Forest Service must study alternative routes that avoid national forests, a process that may significantly reconfigure the project.²² And other cases—like the challenge to the FERC certificate—are still in court.
- The ACP has other options. The Fourth Circuit ruling is specific to Appalachian Trail crossings on federal land and does not limit crossings on state or private land. Other new pipelines, like a 2016 Transco expansion, crossed the Trail on state or private lands.
- The Fourth Circuit's ruling does not affect the 55 existing oil and gas pipelines that cross the Appalachian Trail at 34 separate locations. Those crossings are either (i) on state or private land or (ii) on land owned by the National Park Service subject to property rights that predate federal ownership or the creation of the Appalachian Trail.²³
- No existing pipeline crosses the Appalachian Trail on land owned by the Forest Service. Its recent approvals for the Mountain Valley and Atlantic Coast Pipelines were unprecedented.

¹ *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at ¶¶ 5, 9 (Oct. 13, 2017) [hereinafter ACP Certificate Order], <https://www.ferc.gov/CalendarFiles/20171013192035-CP15-554-000.pdf>.

² *Id.* ¶ 63.

³ *Atlantic Coast Pipeline, LLC*, Abbreviated Appl. of Atlantic Coast Pipeline, LLC for a Certificate of Public Convenience & Necessity & Blanket Certificates 30, *Atlantic Coast Pipeline, LLC*, Dkt. No. CP15-554-000 (Sept. 18, 2015) (FERC eLibrary No. 20150918-5212); ACP Certificate Order ¶ 104.

⁴ Hearing Transcript at 49, *Appl. of Va. Elec. & Power Co. to revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUR-2017-00058 (June 14, 2017) [hereinafter 2017 Dominion Fuel Factor], <http://www.scc.virginia.gov/docketsearch/DOCS/3f%25%2401!.PDF>.

⁵ Dominion Energy, *4th Quarter 2018 Earnings Release Kit 5* (Feb. 1, 2019), https://s2.q4cdn.com/510812146/files/doc_financials/2018/q4/2019-02-01-DE-IR-4Q18-Earnings-Release-Kit-vTC.pdf.

⁶ Hearing Transcript at 49, 2017 Dominion Fuel Factor (June 14, 2017), <http://www.scc.virginia.gov/docketsearch/DOCS/3f%25%2401!.PDF>.

⁷ Order Establishing 2018-2019 Fuel Factor at 3 n.8, *Appl. of Va. Elec. & Power Co. to revise its fuel factor pursuant to § 56-249.6 of the Code of Va.*, Case No. PUR-2018-00067 (Aug. 27, 2018), <http://www.scc.virginia.gov/docketsearch/DOCS/3n%2401!.PDF>; Order Establishing 2019-2020 Fuel Factor at 3 n.8 *Appl. of Va. Elec. & Power Co. to review its fuel factor pursuant to § 56-249.6 of the Code of Va.*, Case No. PUR-2019-00070 (Aug. 15, 2019), <http://www.scc.virginia.gov/docketsearch/DOCS/4%24b%2401!.PDF>.

⁸ Order at 7, *In re: Va. Elec. & Power Co.'s Integrated Res. Plan filing pursuant to Va. Code § 56-597 et seq.*, Case No. PUR-2018-00065 (Dec. 7, 2018) [hereinafter 2018 Dominion IRP], <http://www.scc.virginia.gov/docketsearch/DOCS/4d5g01!.PDF>.

⁹ 2018 Compliance Filing at 4, 2018 Dominion IRP (Mar. 7, 2019), <http://www.scc.virginia.gov/docketsearch/DOCS/4f0801!.PDF>.

¹⁰ Alwyn Scott, *General Electric's Power Unit Fights for Growth as Wind, Solar Gain*, REUTERS, May 24, 2016, <https://www.reuters.com/article/us-ge-renewables/general-electrics-power-unit-fights-for-growth-as-wind-solar-gain-idUSKCN11P0LE>.

¹¹ Final Joint Opening Brief of Conservation Petitioners and Landowner Petitioners at 23-24, *Atlantic Coast Pipeline, LLC v. FERC*, No. 18-1224 (D.C. Cir. filed July 24, 2019).

¹² ACP Certificate Order, (LaFleur, Comm'r, *dissenting*); *Atlantic Coast Pipeline, LLC*, 164 FERC ¶ 61,100 (Aug. 10, 2018) (LaFleur, Comm'r, *dissenting*), <https://www.ferc.gov/CalendarFiles/20180810203730-CP15-554-002.pdf>; Statement of Comm'r Richard Glick on Atlantic Coast Pipeline, LLC (Aug. 10, 2018), <https://www.ferc.gov/media/statements-speeches/glick/2018/08-10-18-glick-ACP.pdf>.

¹³ Letter from Angela M. Woolard, Dominion Energy Transmission, Inc., to Kimberly D. Bose, Sec'y, FERC, Dkt. Nos. CP15-554-000, *et seq.* (Nov. 21, 2018) (FERC eLibrary No. 20181121-5094) (notifying FERC of suspension of Nationwide Permit 12 verification by U.S. Army Corps of Engineers' Pittsburgh, Norfolk, and Wilmington Districts); *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150 (4th Cir. 2018) (opinion vacating U.S. Forest Service special use permit and record of decision); Order, *Sierra Club v. U.S. Dep't of the Interior*, No. 18-2095 (4th Cir. Jan. 23, 2019) (order remanding construction and right-of-way permits to National Park Service for vacatur); Order, *Sierra Club v. U.S. Army Corps of Eng'rs*, No. 18-1743 (4th Cir. Jan. 25, 2019) (order vacating Nationwide Permit 12 verification by U.S. Army Corps of Engineers' Huntington District); *Defs. of Wildlife v. U.S. Dep't of the Interior*, 931 F.3d 339 (4th Cir. 2019) (opinion vacating U.S. Fish and Wildlife Service's biological opinion and incidental take statement).

¹⁴ Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, Sec'y, FERC, Dkt. Nos. CP15-554-000, *et seq.*; CP15-555-000 (Dec. 7, 2018) (FERC eLibrary No. 20181207-5147) (informing FERC that Atlantic has stopped construction on the pipeline).

¹⁵ Petitioners' Final Opening Brief at 8-11, *Friends of Buckingham v. State Air Pollution Control Bd.*, No. 19-1152 (4th Cir. filed Aug. 16, 2019).

¹⁶ Petitioners' Motion to Stay at 4-5, *Defs. of Wildlife*, 931 F.3d 339 (4th Cir. 2019) (No. 18-2090); *Cowpasture*, 911 F.3d at 166.

¹⁷ *Cowpasture*, 911 F.3d at 158-60, 166; Petitioners' Motion to Stay at 3-6, *Defs. of Wildlife*, 931 F.3d 339 (4th Cir. 2019) (No. 18-2090).

¹⁸ *Atlantic Coast Pipeline, LLC v. FERC*, No. 18-1224 (D.C. Cir.).

¹⁹ Harry Weber, S&P GLOBAL PLATTS, Dominion confident it will win Atlantic Coast Pipeline legal challenges (June 11, 2019), <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/061119-dominion-confident-it-will-win-atlantic-coast-pipeline-legal-challenges> (Dominion representative stating that 35 miles of pipeline are in the ground).

²⁰ *Dominion Energy Inc. CEO Thomas Farrell on Q4 2018 Results – Earnings Call Transcript*, SEEKING ALPHA (Feb. 1, 2019), <https://seekingalpha.com/article/4237561-dominion-energy-inc-d-ceo-thomas-farrell-q4-2018-results-earnings-call-transcript>

²¹ *Cowpasture*, 911 F.3d at 179-81.

²² *Id.* at 168-69.

²³ Letter from Austin Gerken, Southern Environmental Law Center, to Kathleen Atkinson, U.S. Forest Service, Dkt. Nos. CP15-554-000, *et seq.* 3 (June 24, 2019) (FERC eLibrary No. 20190624-5131).