UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

In the matter of:	)	
Atlantic Coast Pipeline, LLC Docket Nos. CP15-554-000 PF15-6-000	)	March 3, 2017
Dominion Transmission, Inc. Docket Nos. CP15-555-000 PF15-5-000	)	
Atlantic Coast Pipeline, LLC and Piedmont Natural Gas Company Docket No. CP15-556-000	)	

MOTION TO RESCIND AND REVISE DEIS

PURSUANT to FERC Rule 212 at 18 C.F.R. § 385.212, the National Environmental Policy Act ("NEPA") at 42 U.S.C. § 4332, and 40 C.F.R. § 1502.9, Friends of Nelson, Wild Virginia and Heartwood with a joint motion to the Commission to rescind or revise the Draft Environmental Impact Statement ("DEIS") for the Atlantic Coast Pipeline ("ACP") issued on December 30, 2016 in the above captioned dockets.

MOTION

Pursuant to NEPA Section 102, 42 U.S.C. § 4332, and its implementing rules, specifically 40 C.F.R. § 1502.9, Friends of Nelson, Wild Virginia and Heartwood move that the Commission rescind and revise the DEIS in this matter because the DEIS is "so inadequate as to preclude meaningful analysis," *id.*, § 1502.9(a), as demonstrated by the copious amount of crucial information that has been submitted to FERC after the release of the DEIS. The present public comment period should be placed in abeyance until a revised DEIS is issued, at which time a new public comment period should be granted.

Alternatively, Friends of Nelson, Wild Virginia and Heartwood move that the Commission issue a supplemental DEIS that fully addresses and provides the public an opportunity to comment on the significant new information that has been submitted to FERC since the release of the DEIS. Such a supplement is required where "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *id.*, § 1502.9(c)(1)(ii). A new public comment period must be granted for the supplemental DEIS.

SUPPORTING FACTS AND LAW

1. Friends of Nelson is a not-for-profit membership corporation under the laws of Virginia organized to protect the property rights, property values, rural heritage and the environment for all the citizens of Nelson County, Virginia. Wild

Virginia is a non-profit organization, incorporated in the Commonwealth of Virginia, with the mission of protecting and conserving the wild and natural values of Virginia's Natural Forests. Heartwood is a non-profit organization, incorporated in the state of Indiana, with the mission of protecting national forests throughout the central and eastern United States. Friends of Nelson, Wild Virginia and Heartwood are intervenors in this proceeding pursuant to Commission Notice Granting Late Interventions, November 8, 2016. As intervenors, Friends of Nelson, Wild Virginia and Heartwood have the ability to make motions to the Commission pursuant to Commission Rule 212, 18 C.F.R. § 385.212. The interests of Friends of Nelson, Wild Virginia and Heartwood and its members will be significantly affected by the proposed ACP.

2. On September 18, 2015, the ACP, LLC filed an application under section 7(c) of the Natural Gas Act, requesting authorization to construct, own, and operate the ACP, including three compressor stations and at least 564 miles of pipeline across West Virginia, Virginia, and North Carolina. The ACP is a joint venture of Dominion Resources, Inc., Duke Energy Corporation, Piedmont Natural Gas Company, Inc. (now a wholly owned subsidiary of Duke Energy), and AGL Resources, Inc. (collectively, "Dominion").

3. On October 2, 2015, the Commission filed its Notice of Application, providing additional details about the application and outlining the review process, and opportunities for public comment.

4. The Commission has authority under NGA Section 7 (Interstate Natural Gas Pipelines and Storage Facilities) to issue a Certificate of Public Convenience and Necessity ("certificate") to construct a natural gas pipeline. As described in the Commission guidance manuals, environmental documents are required to describe the purpose and commercial need for the project, the transportation rate to be charged to customers, proposed project facilities, and how the company will comply with all applicable regulatory requirements.[1] The applicants must evaluate project alternatives, identify a preferred route, and complete a thorough environmental analysis – including consultation with appropriate regulatory agencies, data reviews, and field surveys. The Commission is required to analyze the information provided by Dominion to determine if the project serves the public convenience and necessity. The purpose of the Commission's review is to reduce overbuilding of pipeline capacity in order to protect consumers and property owners.

5. As part of its review process, the Commission prepares environmental documents, and in this case, a DEIS was prepared and released on December 30, 2016. As part of the release, the Commission provided a public comment period until April 6, 2017. Subsequently, the Commission scheduled "public

[1] Both the FERC Guidance Manual for Environmental Report Preparation (August 2002) and the Draft Guidance Manual for Environmental Report Preparation (December 2015) provide the minimum analysis required by the agency in preparing environmental documents. Neither guidance manual discusses the requirement to supplement environmental documents so the Commission must rely on NEPA guidance.

comment sessions" in ten locations along the ACP route to allow for public comments.

6. On January 11, 2017, Dominion filed an additional fourteen documents supplementing its original application.[2] This filing of new information contains thousands of new pages of information, voluminous appendices, and attachments on environmental issues directly relevant to the DEIS.[3]

ATTACHMENT A to this motion briefly summarizes the contents of the new documents including, but not limited to:

- historic properties in West Virginia, Virginia, and North Carolina;
- supplemental updates on compressor stations, metering and regulation stations, steep slopes in West Virginia and Virginia, archaeological sites, and impacts of forest fragmentation on bird species ;
- maps of non-jurisdictional facilities;
- engineering updates on horizontal directional drilling, river crossings, and hydrofracture risk;

[2] https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20170110-5142

[3] On January 17, 2017, Dominion filed an additional 14 files of supplemental information and another seven files updating its visual impact assessment. On January 27, Dominion filed an additional 33 files of supplemental information. On February 24, Dominion filed 34 additional files of supplemental information. Although 3 of these files had been submitted previously, and 6 of these files are private filings that only agencies are able to review, none of the other were able to be reviewed at the release of the NOA and DEIS. The filing of new information requires the DEIS to be supplemented or revised and reissued.
http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170123-5110
http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170119-5180
http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170127-5202
http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170224-5149

- geological considerations in West Virginia;
- cultural resources in West Virginia, including cemeteries;
- restoration plans for wetlands;
- considerations of soil, erosion, and steep slopes; direct impacts on forested sites in West Virginia, Virginia, and North Carolina;
- impacts on streams and biotic resources;
- removal and relocation of aquatic species;
- correspondence with state agencies and between state and federal agencies on water quality, air quality, wildlife resources, threatened and endangered species, and mitigation.

This new information clearly supplements the information in the original application, the information supplied to FERC staff for their review, and the information provided to the public and other agencies in the DEIS for review under NEPA.

7. On January 17, 2017, Dominion filed an additional 12 files of supplemental information and another seven files updating its visual impact assessment.[4] This new information clearly supplements the information in the original application, the information supplied to FERC staff for their review, and any information available to agencies, intervenors and the public.

[4] http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170119-5180

ATTACHMENT B to this supplemental motion briefly summarizes the contents of these newly submitted documents.

8. On January 27, 2017, Dominion filed additional 33 files of supplemental information, containing several thousand pages of information, voluminous appendices, and attachments on environmental issues directly relevant to the DEIS.[5]

ATTACHMENT C to this supplemental motion briefly summarizes the contents of this filing of new documents including, but not limited to:

- supplemental updates on compressor stations;
- steep slopes in West Virginia and Virginia;
- archaeological sites;
- draft construction, operations, and maintenance plan;
- wetland and waterbody delineation;
- migratory bird plans;
- restoration plans for wetlands;
- correspondence with state agencies and between state and federal; agencies on water quality, air quality, wildlife resources, threatened and endangered species, and mitigation.

Similar to the new information filed on January 11 and 17, 2017, this new

[5] http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170127-5202

information clearly supplements the information in the original application, the information supplied to FERC staff for their review, and the information provided to the public and other agencies in the DEIS for review under NEPA..

9. On February 24, 2017, Dominion filed another additional 15 files of supplemental information containing hundreds of pages of information, maps and schematics on environmental issues directly relevant to the DEIS.[6]

ATTACHMENT D to this supplemental motion briefly summarizes the contents of these filings of new documents including, but not limited to:

- Wetlands crossings and crossing methods;
- Construction, operation and maintenance plans;
- Access Road Maps;
- Karst assessments and survey reports;
- Forest fragmentation analysis;
- Locally rare species;
- Myriapod/gastropod surveys;
- Study plan for Tiger Salamanders in Virginia;
- Biological survey reports;
- Archeological survey reports;
- Federal consistency information;
- Easement Terms and Conditions for Ward Burton Wildlife Foundation;

[6] http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20170224-5149

- Responses to the Fish and Wildlife Service;
- Agency correspondence for ACP and Supply Header projects.

Similar to the new information filed on January 11, 2017, January 17, 2017 and January 27, 2017, this new information clearly supplements the information in the original application, the information supplied to FERC staff for their review, and the information provided to the public and other agencies in the DEIS for review under NEPA..

10. Because this voluminous, newly-submitted information is critical to assessing and disclosing to the public the impacts of the proposed ACP, the Commission is required to revise and reissue the DEIS. Rules promulgated by the Council on Environmental Quality pursuant to NEPA provide mandatory guidance to all Federal agencies on the preparation of environmental statements. Pursuant to those rules, when an agency publishes a draft EIS, it "must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act." 40 C.F.R. § 1502.9(a). "If a draft statement is so inadequate as to preclude meaningful analysis, the agency *shall* prepare and circulate a revised draft of the appropriate portion." *Id*. (emphasis added). "The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action." *Id*. The volume and importance of the environmental information that has been submitted to FERC after the release of the DEIS demonstrates that the DEIS as released

lacked adequate information for FERC, other agencies, and the public to meaningfully analyze the impacts of the project. As such, FERC is required to rescind the DEIS, revise it, and release the revised DEIS for public comment.

11. If FERC refuses to revise and reissue the DEIS, it must at the very least issue a supplement to the DEIS that addresses the newly-submitted information and put that supplement out for public comment. 40 C.F.R. 1502.9(c)(1)(ii) specifically addresses the obligation of agencies to supplement environmental statements, stating:

> (c) Agencies:
> (1) ***Shall*** prepare supplements to either draft or final environmental impact statements if:
> (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
> (ii) ***There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts***. (emphasis added).

As shown above, the new filings by Dominion on January 11, 17, 27 and February 24, 2017, are squarely within the requirements of this rule. The information is significant and directly relevant to environmental concerns and impacts addressed in the DEIS and, after review by the agency and public review, the information in the new filings is likely to have a bearing on the Commission's action.

12. The timing of Dominion's filing of the new information is suspect and appears to have been held until the agency had issued the DEIS. Much of the

information contained in these filings was generated and/or finalized before the issuance of the NOA and DEIS. However, all of the information in new filings is both substantive and relevant, fitting clearly under the provisions of 40 C.F.R. 1502.9(c)(1)(ii). Therefore, the public comment period on the DEIS should be held in abeyance until agency staff and the Commission review the new information and revise and reissue or, at the very least, supplement the DEIS.

13. Case law on the agency's requirement to revise an environmental document is clear. An EIS that fails to provide the public a meaningful opportunity to review and understand the agency's proposal, methodology, and analysis of potential environmental impacts violates NEPA. See e.g., California ex rel. Lockyer v. U.S. Forest Service, 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006); see also Idaho ex rel. Kempthorne v. U.S. Forest Service, 142 F.Supp.2d 1248, 1261 (D. Idaho 2001) ("NEPA requires full disclosure of all relevant information before there is meaningful public debate and oversight.").

New information causes environmental documents to be supplemented, even after the environmental document has been completed and the agency action taken. In its review of one action, the Court found there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55 (2004) (new study of use of park lands). Of course, not all new information is significant or relevant; but the Commission is required to

take a “hard look” at the new information and, after review, incorporate it into environmental documents. As discussed in Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989), “

> The parties are in essential agreement concerning the standard that governs an agency's decision whether to prepare a supplemental EIS. They agree that an agency should apply a "rule of reason," and the cases they cite in support of this standard explicate this rule in the same basic terms. These cases make clear that an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made. On the other hand, and as the petitioners concede, NEPA does require that agencies take a "hard look" at the environmental effects of their planned action, even after a proposal has received initial approval.

The Court endorsed the “hard look” at new information even after a proposal had received its initial approval, and permit, from the agency. “When new information is presented, the agency is obligated to consider and evaluate it and to make a reasoned decision as to whether it shows that any proposed action will affect the environment in a significant manner not already considered.” Ibid., 490 U.S. at 374; also endorsed by the Court in Arkansas Wildlife v. U.S. Army Corps, 431 F.3d 1096 (Fed. 8th Cir., 2005).

14. Friends of Nelson, Wild Virginia and Heartwood believe that the mandate for a full analysis of the “public convenience and necessity” for pipelines involves more than responding to a professed need for capacity. The new, late-filed

information from Dominion is relevant and significant, directly concerning many of the environmental issues the Commission is required to review and fully analyze. The burden is on the Commission to fully investigate the environmental risks and costs associated with the ACP, including all new and supplemental information.

RELIEF REQUESTED

Friends of Nelson, Wild Virginia and Heartwood respectfully request that the Commission grant their motion. In this matter, the Commission must take a "hard look" at the new information, review it in the context of the application and current public comments, and then revise the DEIS to incorporate the new information. At the same time, the Commission should rescind the DEIS and hold the public comment period in abeyance until it issues the revised DEIS. Lastly, the Commission should require Dominion to file all additional information that is vital to the NEPA environmental review before proceeding further.

Alternatively, FERC must issue a supplement to the DEIS that addresses all new information. FERC must not issue a certificate until the supplement fully incorporates all necessary information and is finalized following public notice and comment.

/s/ Ernest Reed

Ernest Reed
President, Friends of Nelson
President, Wild Virginia
Council Member and Secretary, Heartwood
971 Rainbow Ridge Road
Faber, VA 22938
434-971-1647
lec@wildvirginia.org