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The Atlantic Coast Pipeline is Controversial

- The Atlantic Coast Pipeline (ACP) is a proposed 604-mile natural gas pipeline that would run from West Virginia to Virginia and North Carolina. Originally proposed to cost \$4.5 billion, the project's anticipated costs have ballooned to over \$7 billion.¹ As of January 31, 2019, only about 5 percent of the pipeline is installed.²
- The guaranteed profit for ACP developers is 15%, a higher rate of return than is available for any other infrastructure project. Dominion and Duke Energy, the principal developers, plan to pass through the cost of building the pipeline and the 15% profit to their captive utility ratepayers.³
- As of January 31, 2019, *seven* federal permits required for construction and operation of the ACP have been vacated, stayed, or suspended by a federal court or by the issuing agencies themselves.⁴ As a result, construction of the entire pipeline is halted indefinitely.⁵
- Multiple parties have challenged the Federal Energy Regulatory Commission's approval of the project in federal court. Although the case will not be argued until fall 2019, property owners have forfeited their land in eminent domain proceedings and the project's developers have incurred almost \$3 billion in costs.⁶
- The Trump Administration identified the ACP as one of its top fifty infrastructure "priorities,"⁷ and the Administration has applied intense political pressure on federal agencies to authorize the pipeline over the objections of agency scientists and engineers.⁸

The Atlantic Coast Pipeline is Unnecessary

- Dominion and Duke Energy want to build the ACP because it will generate a long-term, lucrative revenue stream for their shareholders. The project poses little risk to these companies, who plan to use their monopoly utilities to pass through the costs of the project and its generous profit to their captive utility customers—even if the pipeline is never used.⁹
- The ACP is not the result of arms-length dealing by independent companies, as Dominion and Duke Energy own both the pipeline builder and the utilities that bought space on the pipeline.¹⁰ In its approval, FERC relied exclusively on the contracts between these affiliated entities as proof of the need for the project.¹¹
- Dominion claims that the ACP is needed to run its power plants, but mounting evidence shows that the project is *not* needed to meet demand. In 2018, Virginia regulators found that Dominion already owns enough pipeline capacity to serve its existing power plants.¹² Also in 2018, regulators rejected (for the first time) Dominion's Integrated Resource Plan, finding that the company's demand projections "have been consistently overstated."¹³

- Further, even if demand grows, the existing pipeline system has sufficient capacity to meet it. Dominion and Duke Energy know this—in August 2018, they told FERC that the existing Transco system could supply most of the gas that would be delivered by the ACP.¹⁴
- According to two of the four current FERC commissioners, the ACP is not in the public interest.¹⁵

The Route for the Atlantic Coast Pipeline is Risky and Unreasonable

- Dominion’s chosen route for the ACP—across two national forests, national park land, and the steep, forested mountains of the central Appalachians—poses serious environmental problems due to landslide- and erosion-prone mountain slopes, karst geology, and protected lands and species. Construction of the Mountain Valley Pipeline through similar terrain has resulted in serious, long-term harm to rivers and streams.¹⁶
- In December 2018, the Fourth Circuit vacated the Forest Service’s permit for the project, ruling that the Forest Service did not have legal authority to allow the ACP to cross the Appalachian Trail, a unit of the national park system.¹⁷ As a result, crossing the Appalachian Trail along the proposed route would require an act of Congress.¹⁸
- The Fourth Circuit’s ruling is specific to Appalachian Trail crossings on federal land and does not limit the ability of pipelines to cross the Trail on state or private land. The ACP’s developers declined to pursue, and the Forest Service refused to consider, alternative pipeline routes that would involve crossing the Trail on state or private land.
- Nor does the Fourth Circuit’s ruling address Appalachian Trail crossings by existing pipelines, the majority of which occur on state or private land. Of the existing pipelines that cross the Appalachian Trail on federal land, nearly all were constructed before the Trail was created or the land was federally acquired.
- The Fourth Circuit also held that federal law prohibits pipelines through national forests if alternative routes are feasible and that the Forest Service failed to consider those alternatives.¹⁹ One such route, to the north, would have avoided both national forests, the Blue Ridge Parkway, and Shenandoah National Park, and would have crossed the Appalachian Trail on state or private land.²⁰

Conclusion

- The ACP is Dominion’s and Duke’s scheme to make an exorbitant profit at the expense of ratepayers. Utility customers should not have to pay, and landowners should not have to lose their property, for a project that is not in the public interest.
- Adopting ACP-related legislation would be tantamount to Congress approving a specific pipeline route while courts are still reviewing multiple federal approvals for the project.

¹Dominion 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.

²Estimate based on aerial flyovers by Pipeline Citizen Surveillance Initiative.

³*Application of Va. Elec. and Power Co. – To revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUR-2017-00058, Hearing Tr. 49 (June 14, 2017), <http://www.scc.virginia.gov/docketsearch/DOCS/3f9%25%2401!.PDF>.

⁴*Sierra Club v. U.S. Dep’t of the Interior*, 899 F.3d 260 (4th Cir. 2018) (vacating Fish and Wildlife Service incidental take statement and National Park Service right-of-way permit); Letter from Angela M. Woodard, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC (Nov. 21, 2018), eLibrary No. 20181121-5094 (informing FERC of the suspension of Nationwide Permit 12 Verification by U.S. Army Corps of Engineers’ Pittsburg District, Norfolk District, and Wilmington District); *Cowpasture River Pres. Ass’n v. Forest Serv.*, 911 F.3d 150 (4th Cir. 2018) (vacating U.S. Forest Service Special Use Permit and Record of Decision); *Defcs. of Wildlife v. U.S. Dep’t of the Interior*, No. 18-2090 (4th Cir. Dec. 7, 2018) (order staying U.S. Fish and Wildlife Service revised biological opinion and incidental take permit); *Sierra Club v. U.S. Dep’t of the Interior*, No. 18-2095 (4th Cir. Jan. 23, 2019) (order remanding National Park Service revised construction and right-of-way permits for vacatur by the Service).

⁵Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC (Dec. 7, 2018), eLibrary No. 20181207-5147 (informing FERC that Atlantic has stopped construction on the pipeline).

⁶Dominion 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>.

⁷Exec. Order No. 13766, 82 Fed. Reg. 8,657 (Jan. 24, 2017); President-elect Trump, *Priority List: Emergency & National Security Projects 22*, <https://www.documentcloud.org/documents/3409546-Emergency-NatSec50Projects-121416-1-Reduced.html>.

⁸*Cowpasture River Pres. Ass’n v. Forest Serv.*, 911 F.3d 150, 158-60, 166 (4th Cir. 2018); Pet’r’s Mot. to Stay 3-6, *Defcs. of Wildlife v. U.S. Dep’t of the Interior*, No. 18-2090 (4th Cir. Nov. 20, 2018).

⁹*Application of Va. Elec. and Power Co. – To revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUR-2017-00058, Hearing Tr. 49 (June 14, 2017), <http://www.scc.virginia.gov/docketsearch/DOCS/3f9%25%2401!.PDF>.

¹⁰Atlantic Coast Pipeline, LLC, 161 FERC ¶ 61,042 at P 5, 9 (Oct. 13, 2017), <https://www.ferc.gov/CalendarFiles/20171013192035-CP15-554-000.pdf>.

¹¹Atlantic Coast Pipeline, LLC, 161 FERC ¶ 61,042 at P 63 (Oct. 13, 2017), <https://www.ferc.gov/CalendarFiles/20171013192035-CP15-554-000.pdf>.

¹²*Application of Va. Elec. and Power Co. – To revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUR-2018-00067, Order Establishing 2018-2019 Fuel Factor 3 n. 8 (Aug. 27, 2018), <http://www.scc.virginia.gov/docketsearch/DOCS/3nf%2401!.PDF>.

¹³*In re: Va. Elec. and Power Co.'s Integrated Res. Plan filing pursuant to Va. Code § 56-597 et seq.*, Case No. PUR-2018-00065, Order 7 (Dec. 7, 2018), <http://www.scc.virginia.gov/docketsearch/DOCS/4d5g01!.PDF>.

¹⁴Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, 3 (Aug. 13, 2018), eLibrary No. 20180813-5065 (informing FERC that Atlantic could receive more than 885,000 Dt/d from the Transco pipeline and that the Columbia system could accommodate up to 300,000 Dt/d for service to customers in the southeast).

¹⁵Atlantic Coast Pipeline, LLC, 161 FERC ¶ 61,042 (Oct. 13, 2017) (LaFleur, Comm'r, *dissenting*), <https://www.ferc.gov/CalendarFiles/20171013192035-CP15-554-000.pdf>; 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 the Atlantic Coast Pipeline, LLC (Aug. 10, 2018), <https://www.ferc.gov/media/statements-speeches/glick/2018/08-10-18-glick-ACP.pdf>.

¹⁶Press Release, Commonwealth of Va. Off. of the Att'y Gen., Att'y Gen. Herring and DEQ File Lawsuit Over Repeated Env't'l Violations During Constr. of Mountain Valley Pipeline (Dec. 7, 2018), <https://www.oag.state.va.us/media-center/news-releases/1341-december-7-2018-herring-and-deq-file-suit-over-environmental-violations-during-construction-of-mountain-valley-pipeline>.

¹⁷*Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 179-81 (4th Cir. 2018).

¹⁸30 U.S.C. § 185.

¹⁹*Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 168-69 (4th Cir. 2018).

²⁰Atlantic Coast Pipeline, LLC, Final Resource Report 10: Alternatives, 10-49 (Dec. 16, 2015), eLibrary No. 20151217-5026.