

SENT VIA EMAIL

July 1, 2020

Michael S. Regan
Secretary
N.C. Department of Environmental Quality
217 W. Jones Street
Raleigh, N.C. 27603

Dear Secretary Regan:

The Environmental Justice and Equity Advisory Board (EJE) was created to bridge the gap between the Department of Environmental Quality (DEQ) and the communities of North Carolina. The EJE Board's primary charge is to advise you as the Secretary and assist DEQ in achieving fair and equal treatment as well as meaningful involvement of all North Carolinians--regardless of race, color, national origin, or income--in the development, implementation and enforcement of environmental laws, regulations and policies. Our shared goal is to mitigate adverse impacts of environmental policymaking on communities historically burdened disproportionately by environmental harms.

In every meeting of the EJE Advisory Board over the past 2 years, the Atlantic Coast Pipeline (ACP) has been raised repeatedly as a critical environmental justice issue. Members of potentially impacted communities and other concerned citizens have tirelessly presented their concerns and offered recommendations to the EJE Board. The critical evidence submitted to us indicates that the communities along the proposed route of the ACP are at grave risk of negative and irreversible harm, including disruption of livelihoods, loss of property, and untold effects on health and community wellbeing.

Our concern is that the claim that the ACP is required to meet regional energy demand or will benefit the economy is unclear and subject to contradictory information. In fact, there seems to be significant evidence that implementation of the ACP will undercut our overall efforts to reduce factors that contribute to a growing climate crisis.

We—the EJE Advisory Board--cannot support the further expansion and implementation of the ACP. Given our clear mission and utmost appreciation for the opportunity to use our voices to advise you, we offer below a series of recommendations regarding the ACP that we hope you will take into consideration.

Background and Route

The Atlantic Coast Pipeline is a proposed 600-mile underground pipeline originating in Harrison

County, West Virginia, traversing Virginia, and running south into eastern North Carolina. The proposed pipeline route crosses eight North Carolina counties--Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland, and Robeson (the southernmost point on the NC route). The project application was filed initially with the Federal Energy and Regulatory Committee (FERC) on September 18, 2015 with an estimated cost of \$5.1 billion and a November 1, 2018 projected date of operation. The current estimated cost of the project is approximately \$8 billion and early 2022 is the most recent projected date of operation. Dominion Energy and Duke Energy jointly own the project and The Southern Company serves as an anchor shipper.

Purpose and Concerns

The pipeline is designed to transport Appalachian gas to the Mid-Atlantic region. Proponents of the project have listed the need to meet regional gas demand and supplement renewable energy as major justifications for the project. However, opponents--among them community members and environmental advocacy groups--have raised concerns about the potential adverse economic and public health effects on communities along the project's route; inaccuracies in calculations of regional gas demand, increased costs and the burden on ratepayers; the costs of emissions on the climate crisis; and the project's potential to deter bold investment in regional renewable energy generation. We address two of these concerns below.

Impacts on Communities

In the EJ excerpt of the FERC Environmental Impact Statement (EIS), it is acknowledged that “[T]he Council on Environmental Quality call[s] on federal agencies to actively scrutinize the following issues with respect to environmental justice (CEQ, 1997a):

- the racial and economic composition of affected communities;
- health-related issues that may amplify project effects on minority or low-income individuals; and
- public participation strategies, including community or tribal participation in the process.

However, the EIS fails this requirement by excluding the analysis of potential impacts on several minority communities along the pipeline route. More specifically, while impacts on African-Americans are mentioned on pages 4-513 and 4-514 of the EIS, the document is silent on the potential impacts on Lumbee Indian tribal communities, Haliwa-Saponi tribal communities, Coharie Indian tribal communities, and Hispanic/Latino/Latinx communities. This creates a glaring hole in the analysis of the potential impact of this project and raises major environmental justice concerns. Advocating on behalf of such constituencies is precisely why the EJE Advisory Board was formed and we would be morally remiss if we did not take a firm stand against the failure to engage their voices.

Inaccuracies in Calculations of Regional Gas Demand, Construction Costs, and Costs of Emissions

In its original application to FERC, Dominion Energy cited growing regional gas demand as one of the essential reasons justifying the project's construction. Eighty percent of the project's overall capacity was reserved for electric utility partners, who cited the need for new gas-fired electric generating units to meet increased demand for electricity.

However, evidence has emerged that disputes the energy demand and natural gas production scenarios used originally to justify the project. In a letter to the North Carolina Utilities Commission, dated March 7, 2019, the North Carolina Attorney General's Office identified three conditions that needed further consideration to appropriately analyze the impact of the project: 1) a decrease in the economic cost of renewable energy technology; 2) additional costs associated with natural gas production, including the cost of climate change; and 3) concerns that the project's advertised economic benefits were based on misrepresentations that did not sufficiently evaluate economic costs to communities.

These conditions mirror two serious questions that we as the EJE Advisory Board have regarding (1) whether there has been adequate consideration of the potential use of renewable energy sources in calculations of meeting regional energy demand; and 2) if full consideration was given to the potential adverse impacts this project would impose on already vulnerable EJ communities? These critical questions must be addressed.

Challenges

The project has faced numerous challenges including delays in construction, legal opposition, and ballooning costs. There have been major construction delays. In the original FERC application, filed September 2015, Dominion Energy posted an estimated date of operation of November 2018. In December 2018, court decisions resulted in a complete shutdown of construction. Additionally, the project's Certificate of Need and Public Necessity granted by FERC is set to expire in October 2020. Presently, ACP is in the process of applying to FERC for recertification, but a court challenge has been filed that is scheduled for review by the D.C. Circuit Court of Appeals later this year. The challenge cites concerns over whether FERC's reliance on precedent agreements with affiliated monopoly utilities to establish need for the project and the subsequent authorization of the project were arbitrary and capricious violations.

Moreover, the project has lost eight permits since May 2018.

- The U.S. Fish and Wildlife Service Permit--vacated by the U.S. Fourth Circuit Court of Appeals in July 2019.
- The U.S. Forest Service Special Use Permit--vacated by the U.S. Fourth Circuit Court of Appeals in 2019.
- The Virginia Air Pollution Control Board Permit--vacated by the U.S. Fourth Circuit Court of Appeals in 2020.

- The U.S. National Park Service Permit--vacated by the U.S. Fourth Circuit Court of Appeals in 2019.
- Four Clean Water Act authorizations from the U.S. Army Corps of Engineers.

Board Recommendations

As the DEQ EJE Advisory Board, we have serious concerns regarding the risks that the ACP present for vulnerable communities along the proposed route. We also have concerns about the project's impact and implications for the state's climate mitigation plans, if completed. Additionally, we believe that the numerous challenges that the project presently faces reflect a process that lacks clarity and transparency. In light of such concerns, we cannot--in good faith--allow such a process to continue without clearly stating our opposition to the project and to the confusion embedded in the permitting process. We stand in full opposition of construction of the Atlantic Coast Pipeline.

As such, we recommend that DEQ:

- I. Re-consider the petition to revoke the 401 Water Quality Certification, originally filed August 13, 2019 by Friends of the Earth and NC Climate Solutions, with assurance that the petitioners will be notified of the final decision and provided a written explanation of the decision. We ask that DEQ pay special attention to the scope, scale, and impact of the project in light of all new information.
- II. Make a recommendation to the North Carolina Attorney General's Office, given the numerous legal challenges, for the State to officially oppose any attempts to resume construction prior to the resolution of all permitting issues.
- III. Encourage the North Carolina Attorney General's Office to submit a letter to FERC opposing the extension of the ACP's Certificate of Need and Public Necessity **before the July 2 public comment deadline.**

We respectfully submit these recommendations believing that they will help bring clarity and transparency to an otherwise tumultuous process.

Respectfully,

The NC Department of Environmental Quality Secretary's Environmental Justice and Equity Advisory Board