

HARVEY GODWIN JR.
Tribal Chairman



6984 Highway 711 West
Post Office Box 2709
Pembroke, NC 28372
910.521.7861

ORIGINAL

OFFICE OF THE TRIBAL CHAIRMAN
LUMBEE TRIBE OF NORTH CAROLINA

March 29, 2017

Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

RE: Docket Nos. CP15-554-000, CP15-554-001, CP15-555-000, CP15-556-000
Comments on the Atlantic Coast Pipeline and Supply Header Project DEIS

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SECRETARY OF THE
COMMISSION
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FEDERAL ENERGY REGULATORY COMMISSION

Dear Deputy Secretary Davis:

On behalf of the Lumbee Tribe of North Carolina, we submit these comments on the Draft Environmental Impact Statement (DEIS) issued by the Federal Energy Regulatory Commission (FERC) for the Atlantic Coast Pipeline, LLC (ACP). The Lumbee Tribe of North Carolina (Lumbee) is recognized by the state of North Carolina and consists of more than 55,000 members, who reside primarily in Robeson, Hoke, Cumberland and Scotland counties.

These comments address the following key issues:

- FERC, Atlantic Coast Pipeline, LLC (ACP), nor Dominion Transmission, Inc. (DTI) have adequately engaged the Lumbee throughout the pre-filing and DEIS preparation process.
- The DEIS does not adequately include the Lumbee as a stakeholder for emergency preparedness purposes.
- The DEIS does not adequately provide a plan to provide notice to the Lumbee Tribe of NC in the event of discovery of archeological or burial sites.

Thank you for the opportunity to provide comments on this project.

Sincerely,

Handwritten signature of Harvey Godwin.

Mr. Harvey Godwin, Tribal Chairman
hgodwin@lumbeetribe.com
Lumbee Tribe of North Carolina

Handwritten signature of Freda Porter.

Dr. Freda Porter, Tribal Administrator
fporter@lumbeetribe.com
Lumbee Tribe of North Carolina

I. Neither FERC nor Dominion has adequately engaged the Lumbee Tribal Government throughout the pre-filing and DEIS preparation process.

FERC's stated purpose for its "pre-filing" process is to "encourage early involvement of interested stakeholders, facilitate interagency cooperation, and identify and resolve environmental issues before an application is filed."¹ In 2014, ACP and DTI requested to start the pre-filing process for the project and began to develop a public participation plan, contact landowners, and hold open houses.² In 2015, FERC sent its "Notice of Intent to Prepare an Environmental Impact Statement" (NOI) to 6,613 parties, held public scoping meeting, and participated in "open houses, interagency meetings, conference calls, and...site visits."³

However, neither FERC nor DTI has engaged the Lumbee Tribal Government in a way that acknowledges its status as a tribal government. The tribe was not contacted during any of the pre-filing outreach, did not receive the NOI, and only received a notice of the DEIS. Further, the DEIS was distributed only to a "Paula" Brooks.⁴ This person is not the sitting chair of the tribe and does not even correctly reference the previous Lumbee Tribal Chairman—the correct name is Paul Brooks.

Additionally, FERC acknowledges that a disproportionate percentage of minority and low-income residents will be affected by the project's siting.⁵ ("In North Carolina, minorities comprise 30.5 percent of the total population. The percentage of minorities in the North Carolina census tracts within 1 mile of ACP ranges from 12.5 to 95.5 percent. In 13 of the 42 census tracts, the minority population is meaningfully greater than that of the county in which it is located.... In North Carolina, 17.6 percent of all persons live below the poverty level. Twenty-seven of the 42 census tracts in North Carolina within a 1-mile radius of ACP facilities have a higher percentage of persons living below poverty-level when compared to the state.") However, FERC concludes that "there is no evidence that ACP or SHP would cause a disproportionate share of high and adverse environmental or socioeconomic impacts on any racial, ethnic, or socioeconomic group."⁶

We find this conclusion to be unconvincing considering that the Lumbee Tribal Government has not been engaged with throughout the pre-filing and DEIS process. The 1956 Lumbee Act acknowledges the tribe as Federally Recognized, and we are sending a separate letter explaining why that acknowledgment requires tribal consultation with us under NEPA implementing regulations. In the interim, at a minimum, we ask that accurate contact information be added to the distribution list for all future communications and solicitations for comment relating to this project:

Mailing Address:
PO Box 2709
Pembroke, NC 28372

Points of Contact:
Mr. Harvey Godwin, Tribal Chairman



¹ Draft EIS at ES-2.

² *Id.* at 1-12 to -13.

³ *Id.*

⁴ *Id.* at Appendix A, A-7.

⁵ *Id.* at 4-412 to -13.

⁶ *Id.* at 4-413.

hgodwin@lumbeetribe.com
Lumbee Tribe of North Carolina

Dr. Freda Porter, Tribal Administrator
fporter@lumbeetribe.com
Lumbee Tribe of North Carolina

II. The DEIS does not adequately include the Lumbee Tribal Government as a stakeholder for emergency preparedness purposes.

The Department of Transportation's (DOT) minimum standards requires ACP and DTI to establish an emergency plan "that includes procedures to minimize the hazards in a natural gas pipeline emergency" and directs the companies to "establish[] and maintain[] communications with local fire, police, and public officials, and coordinat[e] emergency response."⁷ As part of that plan, the DEIS states that ACP and DTI will "meet with Local Emergency Planning Committees, which include fire departments, police departments, and public officials" and "work with these committees to communicate the specifics about the pipeline facilities in the area and the need for emergency response including community notification in the event of an incident."⁸ The DEIS envisions that this engagement would continue "periodically" and that "Local Emergency Planning Committee personnel would be involved in any operator-simulated emergency exercises and post-exercise critiques, if conducted."⁹

In order to adequately represent affected communities and meet DOT's minimum requirements, the Lumbee Tribal Government requests to be included as a stakeholder on the Local Emergency Planning Committee and added to any communications relating to emergency preparedness. As part of this process, we would also like to receive direct information about how to best prepare for a pipeline emergency, whether this information comes from FERC or from ACP or DTI as part of their emergency plan.

III. The DEIS does not adequately provide a plan to provide notice to the Lumbee Tribal Government in the event of discovery of archeological or burial sites.

The Lumbee Tribal Government requests to receive the same notifications regarding archeological concerns that other tribes have been afforded. The Lumbee are located in Cumberland, Hoke, Robeson, and Scotland counties, where a total of twenty-seven sites have been identified as archeological and historic cultural resources in the ACP's area of potential effects.¹⁰ Similar to the requests of the Catawba Indian Nation, the Lumbee Tribal Government would like to be notified if artifacts or remains are encountered during the ground disturbing phase of construction.¹¹ We also request to be notified immediately in the event of an unanticipated discovery during construction, as the Delaware Nation requested.¹² The Lumbee takes ACP at its word that it "will continue to consult with tribes who are interested in the projects and ensure they get the information they request" and expects Atlantic to fulfill this commitment by adding Lumbee Tribal Government contact information to Atlantic's consultation list and sharing requested information.¹³

⁷ *Id.* at 4-475.

⁸ *Id.* at 4-478.

⁹ *Id.*

¹⁰ *Id.* at 4-428 to -30.

¹¹ *Id.* at 4-435.

¹² *Id.*

¹³ *Id.*

Consistent with FERC's directive that Atlantic and the North Carolina State Historic Preservation Office assist stakeholders with obtaining privileged archaeological information, we would also like a copy of the North Carolina Unanticipated Discovery Plan—which is not available in the DEIS—so that we can learn Atlantic's plan for handling unanticipated discoveries during the ground disturbing phase or construction.¹⁴ If remains or archeological discoveries are identified during construction, access to the Unanticipated Discovery Plan would help the Lumbee understand ACP's procedure to ensure archeological and historic cultural resources are protected and preserved.

¹⁴ *Id.* at 4-434.

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