



South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

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a 501c3
non-profit organization

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Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Re: Transco to Charleston (Dominion) Project
Comments on Environmental Assessment
Docket No. CP16-98-000

Dear Secretary Bose:

I am writing on behalf of Upstate Forever, a non-profit organization located in Greenville, South Carolina, to submit comments regarding the Environmental Assessment (EA) of a natural gas pipeline proposed by Dominion Carolina Gas Transmission (Dominion). The proposed pipeline is identified by FERC as the Transco to Charleston Project, Docket No. CP16-98-000. Pursuant to NEPA, FERC issued its EA for this project on October 18, 2016, reaching a finding of no significant impact (FONSI). Upstate Forever's mission is to promote sensible growth and protect special places in the Upstate region of South Carolina, which is the area to be most directly affected by Dominion's proposed project. Upstate Forever believes that the EA has significant shortcomings that have facilitated a pipeline design that is inconsistent with Upstate Forever's mission and with the best interests of the citizens of the Upstate.

As an initial matter, the essential nature of this project belies FERC's FONSI. The immense scope of this project is undeniable, and if this were a project with impacts concentrated on a single site, rather than a pipeline with impacts interspersed over 60 miles, those impacts would likely be hailed as catastrophic. Indeed, one can scarcely imagine a single-site project involving: 84 waterbody crossings, the majority of which will simply be open trenched; 10 wetland crossings, which will involve significant construction disturbance and ongoing threat of gas leaks and spills; 700 acres of environmental disturbance during construction; almost 300 acres that will basically be permanently denuded for purpose of a right-of-way; and the creation of 7 new roadways permanently covering 88 acres. These are exactly the impacts proposed by Dominion, yet somehow their magnitude seems to have

been obscured as a result of the project being extended over multiple counties and many parcels, to the point that FERC has dismissed the impacts as not significant.

Starting from the “big picture” down, we believe that it is an error to forego preparation of an Environmental Impact Statement (EIS) for this project. Given the scope of this project, to conclude that it is not a major action with significant effects on the environment is to reject any natural meaning of those words and to reject a well-established history of NEPA analysis in similar cases. Indeed, agencies have typically prepared, and courts have typically required, the preparation of an EIS for pipeline projects comparable to the one in question here.

A good example is the case of Fuel Safe Washington v. F.E.R.C., 389 F.3d 1313 (10th Cir. 2004), which also involved a FERC certificate of need determination for a natural gas pipeline. The pipeline in that case was shorter than the one proposed by Dominion (46 miles vs. 60 miles), and both projects involved comparable compressor station construction. However, FERC prepared a full Environmental Impact Statement for the pipeline in Fuel Safe Washington, while it has obviously declined to do so here. The case of Wilderness Workshop v. U.S. Bureau of Land Mgmt., 531 F.3d 1220 (10th Cir. 2008) also involved a comparable pipeline project. The natural gas pipeline in that case was approximately 25.5 miles in length and 20 inches in diameter, and it was being constructed along with a related four-acre natural gas facility. The Bureau of Land Management prepared an EIS for this project, though it is obviously significantly smaller in scale than Dominion’s project. See also Nat’l Comm. for the New River v. F.E.R.C., 373 F.3d 1323 (D.C. Cir. 2004) (FERC prepared EIS for certificate of need decision involving 100 mile natural gas pipeline extension). Yet another FERC natural gas pipeline certificate of need case involving preparation of an EIS is South Coast Air Quality Mgmt. Dist. v. F.E.R.C., 621 F.3d 1085 (9th Cir. 2010). FERC prepared an EIS for that project despite the fact that it merely involved expansion of an *existing* 80-mile pipeline, within the existing right-of-way, to allow two-way natural gas flow. The project did not involve installation of a new pipeline or clearing of a new right-of-way. Notably, a significant factor in FERC’s NEPA consideration of the pipeline project was the “downstream emissions” from those using the natural gas. This type of environmental impact received only passing mention in the Dominion EA, yet, in South Coast Air, FERC used these consequential air emissions as a basis for preparing a full EIS.

On the other side of the coin, when FERC has declined to prepare an EIS for a project of this nature and magnitude, courts have looked upon such inaction with skepticism. That is what occurred in the recent case of Delaware Riverkeeper Network v. F.E.R.C., 753 F.3d 1304 (D.C. Cir. 2014), in which FERC

prepared only an EA for a 40-mile natural gas pipeline installation. The court found the EA to be inadequate and remanded to FERC for additional consideration of cumulative impacts from the project. All in all, the clear trend for natural gas pipeline projects of the magnitude proposed by Dominion is that FERC will prepare an EIS to fully assess environmental impacts and alternatives. FERC has not identified any notable basis for why it is breaking with that trend here, and the significance of the environmental resources at stake do not support such a departure.

This basis for EIS preparation is made even more pointed by EPA's recent input into FERC's NEPA process. In particular, the EPA has strongly encouraged FERC to take a more comprehensive approach to analyzing greenhouse gas emissions from natural gas pipelines and to fold such analysis into FERC's NEPA consideration.¹ In other words, the EPA believes that life-cycle analysis of emissions facilitated by proposed natural gas pipelines should be a meaningful component of the NEPA process for those pipelines. Again, consideration of such emissions was almost entirely absent from the Dominion EA. In addition to the fact that such shortcoming makes the EA incomplete, consideration of these emissions would have pushed the balance even further in favor of EIS preparation.

A second "big picture" objection we have is to the consequences of the EA's flat declaration that "need is not an environmental issue to be addressed in an EA." In previous comments to the Commission, Upstate Forever pointed out the serious lack of information regarding the need for this project. The question of need is obvious from even a basic map review of the proposed pipeline construction in relation to existing infrastructure. Dominion's proposed pipeline appears merely to be a more direct route between existing stations, moving natural gas between two points that are already connected by an existing pipeline. Dominion's proposed pipeline does not provide natural gas to a new area, nor does the pipeline even directly service the area where its supposed users are located (the pipeline is almost entirely within Upstate South Carolina, and the users are in the lower part of the state). While the overall purpose of a NEPA analysis is certainly not to assess whether a project is needed, the outright exclusion of such consideration from the analysis is problematic.

This problem arises from the fact that the purpose and need for a project are essential in establishing a basis for the development of the range of reasonable alternatives required in an EA or EIS and assisting with the identification and eventual selection of a preferred alternative. In other words, the identification and evaluation of alternative ways of meeting the purpose and

¹See <<http://www.eenews.net/stories/1060044726>>.

need of the proposed project is the heart of the NEPA analysis. FERC has rendered this analysis incomplete by cutting “need” out of the equation. As a consequence, the EA’s alternatives analysis is incomplete and relies on unproven assumptions. This is especially true of the no-action alternative, which we believe should receive genuine consideration under the circumstances. However, the EA provides just the opposite. As pointed out in Upstate Forever’s prior comments, there are serious reasons to doubt that the three SCE&G plants cited by Dominion actually require natural gas from this proposed pipeline, especially for the thirty year term cited by Dominion. The EA’s “no-action” analysis assumes genuine demand from these customers and that this demand cannot be satisfied by existing infrastructure. Neither of these things has been established. These assumptions set up the EA’s conclusion that “no-action” is not a reasonable alternative because some pipeline will need to be built to supply these customers. Such conclusion is not supported by evidence that has been presented to the public during this process. The EA’s analysis of the critical no-action alternative is meaningless without an actual assessment of need, which the EA has explicitly declined to undertake.

Moving into the details of the pipeline plan, one of Upstate Forever’s primary concerns with this project is that its path traverses an area of Spartanburg County that the organization has previously identified for its significant environmental value. In 2010, Upstate Forever issued its Special Places Inventory for Spartanburg County, which used multi-level modeling to identify six areas in the County that still have significant intact biological resources.² One of the six “conservation focus areas” (CFA) identified through this project was the area surrounding the confluence of Ferguson Creek and Tyger River. Dominion’s proposed pipeline essentially bisects this CFA, with numerous crossings through the waterbodies that give the area its biological value. Dominion says that it has implemented minor route variations to minimize impacts in this area and that the major waterbodies here will be crossed using HDD boring. However, it appears that a number of important tributaries in the CFA will still be crossed using traditional trenching methods. Upstate Forever believes that its careful analysis reflected in the Special Places Inventory reflects that this is one of the most environmentally valuable areas in the Upstate, and certainly along the proposed route of this pipeline. In light of this consideration, we believe it would be appropriate for Dominion to bore all wetland and water crossings in the CFA. Further, the EA mentions that aboveground clearing of the right-of-way may not be required at boring locations, if boring depth is deep enough to protect from vegetation tap roots. Within the CFA, we believe it would be appropriate to bore to that depth

² The Special Places Inventory is available online at: <https://upstateforever.org/pdfs/other/SpartSpecialPlacesInventory2010.pdf>.

wherever practicable, so as to avoid riparian clearing. We request consideration of these two protective measures as part of the EA's reasonable alternatives analysis.

Dominion also plans to include revegetation measures implemented according to their T2C Plan and T2C Procedures, which would "allow" for riparian areas to revegetate. We highly recommend that Dominion be required to not only revegetate these areas but also include monitoring and maintenance for one year to ensure streambank clearings and riparian areas are restored to original conditions or better. We believe that such requirement would be an appropriate mitigation measure and would be significant in supporting the FONSI.

Finally, 385 additional temporary workspace stations (ATWS) were identified by Dominion for the project. 29 of the ATWS are within 50 feet of a wetland or waterbody, and 19 are within as close as ten feet. Dominion has proposed to install double silt fences at the ATWS in close proximity to waterbodies and to have FERC approval for each such site prior to use. We believe that the significance of the resources at stake dictate that Dominion should provide additional erosion control measures beyond a double silt fence, such as vegetation for filtration, or should entirely avoid ATWS sites that will be situated within ten feet of a wetland or waterbody to further minimize any potential impacts to these resources. Again, such requirement would be an appropriate mitigation measure and would be significant in supporting the FONSI.

Thank you for your consideration of our comments on this critically important matter. If you have any questions about these comments, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in blue ink that reads "Michael Corley". The signature is written in a cursive, slightly slanted style.

Michael Corley, Esq.