

No. 18-1224 (consolidated with Nos. 18-1280, 18-1308,  
18-1309, 18-1310, 18-1311, 18-1312, 18-1313)

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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ATLANTIC COAST PIPELINE, LLC, *et al.*,  
*Petitioners,*

LORA BAUM, *et al.*,  
*Petitioner-Intervenors,*

v.

FEDERAL ENERGY REGULATORY  
COMMISSION,  
*Respondent,*

ATLANTIC COAST PIPELINE, LLC, *et al.*,  
*Respondent-Intervenors.*

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On Petition for Review of Orders of the Federal Energy Regulatory Commission

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**OPENING BRIEF OF INTERVENORS  
LORA BAUM AND VICTOR BAUM  
IN SUPPORT OF LANDOWNER PETITIONERS**

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## **CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

### **A. Parties**

In accordance with D.C. Cir. Rule 28(a)(1), Intervenors Lora Baum and Victor Baum state that all parties, intervenors, and amici appearing in this Court are listed in the: Joint Opening Brief of Conservation Petitioners and Landowner Petitioners, Document #1781445; Joint Opening Brief of Petitioners Wintergreen Property Owners Association, Friends of Wintergreen, Inc., and the Fairway Woods Homeowners Condominium Association, Doc. No. 1781470; Initial Brief for Petitioner Atlantic Coast Pipeline, LLC, Doc. No. 1781429; and Initial Brief of Petitioner North Carolina Utilities Commission, Doc. No. 1781431.

### **B. Rulings Under Review**

References to the rulings under review appear in all of the Briefs for Petitioners.

### **C. Related Cases**

References to related cases appear in all of the Briefs for Petitioners.

## **RULE 26.1 DISCLOSURE STATEMENT**

The Niskanen Center is a 501(c)(3) think tank and advocacy organization; it has no parent company, and no publicly-held company has a 10% or greater ownership interest in it.

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## GLOSSARY OF TERMS

ACP	Atlantic Coast Pipeline
Certificate	FERC's Certificate of Public Convenience and Necessity, <i>Atlantic Coast Pipeline</i> , Order Issuing Certificate, 161 FERC ¶ 61,042 (Oct. 13, 2017)
FERC	Federal Energy Regulatory Commission
Landowner Brief	Joint Opening Brief of Conservation Petitioners and Landowner Petitioners (Doc. # 1781445)
L.B. Decl.	Declaration of Lora Baum
Motion	Lora and Victor Baums's Motion to Intervene in <i>ACP v. FERC</i> (D.C. Cir 2018) (No. 18-1313, Doc # 1762214)
NGA	Natural Gas Act
V.B. Decl.	Declaration of Victor Baum

## **JURISDICTION**

Intervenor Landowners Victor Baum and Lora Baum (“the Baums”) adopt the Jurisdictional Statement set forth in the Joint Opening Brief of Conservation Petitioners and Landowner Petitioners (Doc. # 1781445) (“Landowner Brief”), p. 1. This Court granted the Baums’ Motion to Intervene on November 29, 2018. Additionally, as described below (p. 8) the Baums have “reasonable ground[s] for failure” to seek rehearing in FERC’s administrative proceeding, and thus may seek judicial review of FERC’s decision. 15 U.S.C. § 717r(b).

## **STATUTES AND REGULATIONS**

All applicable statutes and regulations are contained in the Addenda to Petitioners’ Briefs, with the exception of those contained in the Addendum to this Brief.

## **STATEMENT OF ISSUES**

1. Did FERC violate the Baums’ Due Process rights by not providing constitutionally adequate notice that they were required to intervene in the administrative proceedings below in order to obtain review of FERC’s decision to issue the certificate of public convenience and necessity which authorized Atlantic Coast Pipeline (“ACP”) to take their land?

2. The Baums adopt in part Conservation and Landowner Petitioners’ Statement of the Issues, specifically whether ACP’s use of eminent domain violates the Natural Gas Act or the Constitution. Landowner Brief at 3.

## INTRODUCTION

FERC provides no notice to landowners that a pipeline company has applied to FERC for a certificate of public convenience and necessity (“Certificate”), that if FERC grants the Certificate, then the pipeline company will take the landowners’ property using federal eminent domain authority, or that landowners *must* intervene in FERC’s administrative process in order to preserve their rights to rehearing and judicial review of FERC’s decision. Instead, in 18 CFR 157.6(d), FERC has delegated these Constitutional responsibilities entirely to the Certificate applicant, with predictable consequences.

At issue here are the consequences following from ACP’s failure to provide such notice to the Baums: it denied the Baums their statutory right, under the Natural Gas Act, to have FERC reconsider its decision to deprive them of their property, and denied the Baum’s their statutory and Constitutional right to seek judicial review of FERC’s decision.

The Baums believed that their rights would be preserved so long as they submitted some comments in the FERC proceeding. Declaration of Victor Baum (“V.B. Decl.”) ¶ 21; Declaration of Lora Baum (“L.B. Decl.”), ¶ 21.<sup>1</sup> In fact, they submitted five sets of comments concerning ACP. V.B. Decl., ¶¶ 13, 28, 29; L.B.

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<sup>1</sup> The Baums’ Declarations can be found in the attached Addendum, and on pages 21-46 of their Motion to Intervene in *ACP v. FERC* (D.C. Cir 2018) (No. 18-1313, Doc # 1762214) (the “Motion”).

Decl., ¶¶ 13, 28. Their concerns are well-founded: not only will ACP be built through their land in Bath County, Virginia, but will come within 100 yards of their house, putting them squarely within the “immolation zone” should an accident occur. V.B. Decl. ¶ 38, L.B. Decl. ¶ 37. ACP destroys the very reasons they purchased the land, the view and the serenity of the property’s surroundings. V.B. Decl., ¶¶ 5, 35; L.B. Decl., ¶ 5, 34.

If FERC or ACP had adequately informed the Baums that, in addition to submitting comments, they had to intervene in the agency’s administrative process in order to preserve their rights to judicial review, “[they] absolutely would have intervened in the FERC proceeding.” V.B. Decl., ¶ 33; L.B. Decl., ¶ 32.

### **SUMMARY OF ARGUMENT**

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), FERC violated the Due Process Clause by failing to give the Baums adequate notice that they were required to intervene in FERC’s administrative process in order to have the right (1) to request that FERC rehear issues related to its decision, and (2) to seek judicial review of FERC’s decision.

The Baums have no other forum for their claims; although they asserted them in an action in federal district court, that court dismissed the complaint on the grounds that under the Natural Gas Act, the exclusive forum for any such claims was via appeal of FERC’s decision to an appropriate Court of Appeals, *i.e.*, this case.

## Argument

### **I. FERC'S FAILURE TO PROVIDE ADEQUATE NOTICE TO THE BAUMS THAT THEY WERE REQUIRED TO INTERVENE IN FERC'S ADMINISTRATIVE PROCESS IN ORDER TO PRESERVE THEIR RIGHTS TO SEEK REHEARING AND JUDICIAL REVIEW VIOLATED THE DUE PROCESS CLAUSE.**

The Fifth Amendment provides that "no person shall be ... deprived of life, liberty, or property, without due process of law". FERC violated the Due Process clause by failing to give the Baums adequate notice that they had to intervene in FERC's administrative proceeding in order to preserve their right to seek rehearing of FERC's decision, because the Natural Gas Act limits the right to seek rehearing to parties to the administrative process. 15 U.S.C. § 717r(a). Thus the Baums lost both their right to have FERC correct any mistakes it made in granting the ACP Certificate (JA\_\_ [Certificate Order]), and their right to judicial review of FERC's decision, as the Natural Gas Act limits this right to parties who have sought rehearing by FERC. 15 U.S.C. § 717r(b).<sup>2</sup>

In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the Supreme Court set forth four factors to be considered in determining whether a government procedure satisfies due process:

- (1) 'the private interest that will be affected by the official action;'
- (2) 'the risk of an erroneous deprivation of such interest through the procedures used;'
- (3) 'the probable value, if any, of additional or substitute procedural safeguards;'
- and (4) 'the Government's interest, including the function involved and the

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<sup>2</sup> Intervenors here do not assert a claim that FERC's failure to provide adequate notice concerning the need to intervene violated their due process right to a predeprivation hearing.

fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'

As to the first factor, it is indisputable that the Baum's home and property are a private interest of the first magnitude. "Good's right to maintain control over his home, and to be free from governmental interference, is a private interest of historic and continuing importance." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993). The second factor also weighs in the Baums' favor, since the risk of an erroneous deprivation of property resulting from FERC's procedure is, by definition, significant as it deprives landowners of both rehearing before the Commission, and judicial review of FERC's decision. The third factor also weighs in the Baum's favor, since the value of clearly informing landowners that they must intervene in order to preserve their rights (and how to do so) would ensure that landowners did not unwittingly waive those protections. Finally, the "fiscal and administrative burdens" of providing such clear notice to landowners are close to zero. That notice need be no more than a few simple, declarative sentences prominently displayed as part of one or more of the documents that FERC requires the certificate applicant to provide to landowners, *e.g.*, 18 CFR 157.6(d)(3)(ii); (d)(3)(vii).

In *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950) the Supreme Court described the parameters of what constitutes adequate notice:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, *under all the circumstances*, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *The notice must be of such*

*nature as reasonably to convey the required information*, and it must afford a reasonable time for those interested to make their appearance.

*Id.* at 314 (emphasis added). The Court observed that, “This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.” *Id.*

As described in their Motion to Intervene (Motion at 8) and their accompanying declarations, ACP sent over 200 pages of materials to the Baums, none of which adequately notified them that if they did not intervene in the FERC action, they would not be able to seek any meaningful administrative or judicial review of FERC’s decision permitting ACP to take their land. And even if they had understood that they had to intervene, there were multiple, conflicting sets of instructions on how to do it and, in any event, the initial FERC Notice of Application that ACP provided to them *stated that the deadline for intervention had passed more than five months previously.*

Motion at 6-7; V.B. Decl. ¶¶ 16-19; L.B. Decl. ¶¶ 16-19. Moreover, the Baums are extremely well-educated: Victor Baum is a physician with the Center for Biologics Evaluation and Research at the Food and Drug Administration; Lora Baum is a Clinical Psychologist and former Associate Professor of Psychiatry and Neurobehavioral Sciences at the University of Virginia School of Medicine. These are people who paid very close attention to the material they received and yet had no idea that they were required to intervene as a means of protecting their rights. V.B. Decl. ¶¶ 30-32; L.B. Decl. ¶¶ 29-31.



*Mullane* requires that “the means employed must be such as one desirous of *actually informing* the absentee might reasonably adopt to accomplish it.” *Mullane*, 339 U.S. at 315 (emphasis added); the notice provided to the Baums does not meet this standard.

## II. THIS PROCEEDING IS THE BAUMS’ ONLY MEANS OF REDRESS.

The Baums understand the unusual nature of the remedy they seek from this Court, but they have no other option. The Baums and other non-intervening landowners were among the plaintiffs in *Bold Alliance v. FERC*, 2018 U.S. Dist. LEXIS 167392 (D.D.C. September 27, 2018), where they raised the same notice issue as they do here, *i.e.*, that the notice they received did “not explain that a landowner’s failure to intervene in the FERC process will result in waiver of potential statutory, constitutional, and other legal challenges to the Certificate itself or to FERC’s findings of public use and necessity” (No. 17-1822, Doc. # 19, at 17). But the District Court dismissed the complaint for lack of subject matter jurisdiction, stating that, “the Natural Gas Act provides the sole avenue of review for parties aggrieved by FERC orders. *See* 15 U.S.C. § 717r”, and that “Under the Act, the jurisdiction of our Court of Appeals ‘shall be exclusive.’ *Id.* § 717r(b).” *Bold Alliance*, 2018 U.S. Dist. LEXIS at \*13.<sup>3</sup> Thus, by the District Court’s own reasoning, this proceeding is the *only* forum where the Baums’ Constitutional claims can be heard.

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<sup>3</sup> That decision has been appealed *Bold Alliance v. FERC*, No. 18-5322, but proceedings are stayed pending a decision by this Court. *Id.*, Doc. No. 1773577.

The Baums also have no hope of having their due process claims heard in any future condemnation action. District courts have held unanimously that their jurisdiction in condemnation proceedings is limited to determinations of possession and just compensation, *See e.g., In re PennEast Pipeline Co.*, 2018 U.S. Dist. LEXIS 211599, Note 42, \*49; *Rover Pipeline LLC v. Rover Tract*, 2017 U.S. Dist. LEXIS 216978, \*5.

Finally, intervenors note that the exceptional nature of the FERC's due process violations meets both the statutory and equitable tests under which an intervenor may raise an issue not raised by a petitioner. The Natural Gas Act, 15 U.S.C. 717r(b), gives this Court jurisdiction over only those issues raised on rehearing "unless there is reasonable ground for failure so to do." Such "reasonable ground" clearly exists here. Independently, the facts also meet this Court's "extraordinary circumstance" exception allowing an intervenor to raise an issue not raised by a petitioner. *Ala. Mun. Distrib. Group v. FERC*, 300 F.3d 877 (D.C. Cir. 2002) ("absent extraordinary circumstances, intervenors may join issue only on a matter that has been brought before the court by another party.").

### **Conclusion**

For the reasons stated herein, the Court should vacate the Certificate insofar as it authorizes ACP to take the Baums' property under 15 U.S.C. 717f(h).

Respectfully submitted,

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Dated: April 12, 2019

### CERTIFICATE OF COMPLIANCE

This brief complies with this Court's March 13, 2019 Briefing Format and Scheduling Order because it contains 1,976 words, excluding the parts of the brief exempted by FRAP 32(a)(7)(B) and D.C. Cir. Rule 32(e)(1). Microsoft Word computed the word count.

This brief complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of FRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface (Garamond) in 14-point font.

Respectfully submitted,

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**ADDENDUM TO OPENING BRIEF OF INTERVENORS  
LORA BAUM AND VICTOR BAUM  
IN SUPPORT OF LANDOWNER PETITIONERS**

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**18 CFR 157.6**

This document is current through the April 8, 2019 issue of the Federal Register. Title 3 is current through April 5, 2019.

***Code of Federal Regulations > TITLE 18 -- CONSERVATION OF POWER AND WATER RESOURCES > CHAPTER I -- FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY > SUBCHAPTER E -- REGULATIONS UNDER NATURAL GAS ACT > PART 157 -- APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT > SUBPART A -- APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT, AS AMENDED, CONCERNING ANY OPERATION, SALES, SERVICE, CONSTRUCTION, EXTENSION, ACQUISITION OR ABANDONMENT***

**§ 157.6 Applications; general requirements.**

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(a) Applicable rules--(1) Submission required to be furnished by applicant under this subpart. Applications, amendments thereto, and all exhibits and other submissions required to be furnished by an applicant to the Commission under this subpart must be submitted in an original and 7 conformed copies. To the extent that data required under this subpart has been provided to the Commission, this data need not be duplicated. The applicant must, however, include a statement identifying the forms and records containing the required information and when that form or record was submitted.

(2) Maps and diagrams. An applicant required to submit a map or diagram under this subpart must submit one paper copy of the map or diagram.

(3) The following must be submitted in electronic format as prescribed by the Commission:

- (i) Applications filed under this part 157 and all attached exhibits;
- (ii) Applications covering acquisitions and all attached exhibits;
- (iii) Applications for temporary certificates and all attached exhibits;
- (iv) Applications to abandon facilities or services and all attached exhibits;
- (v) The progress reports required under § 157.20(c) and (d);
- (vi) Applications submitted under subpart E of this part and all attached exhibits;
- (vii) Applications submitted under subpart F of this part and all attached exhibits;

(viii) Requests for authorization under the notice procedures established in § 157.205 and all attached exhibits;

(ix) The annual report required by § 157.207;

(x) The report required under § 157.214 when storage capacity is increased;

(xi) Amendments to any of the foregoing.

(4) All filings must be signed in compliance with the following.

(i) The signature on a filing constitutes a certification that: The signer has read the filing signed and knows the contents of the paper copies and electronic filing; the paper copies contain the same information as contained in the electronic filing; the contents as stated in the copies and in the electronic filing are true to the best knowledge and belief of the signer; and the signer possesses full power and authority to sign the filing.

(ii) A filing must be signed by one of the following:

(A) The person on behalf of whom the filing is made;

(B) An officer, agent, or employee of the governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(C) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(5) Other requirements. Applications under section 7 of the Natural Gas Act must conform to the requirements of §§ 157.5 through 157.14. Amendments to or withdrawals of applications must conform to the requirements of §§ 385.215 and 385.216 of this chapter. If the application involves an acquisition of facilities, it must conform to the additional requirements prescribed in §§ 157.15 and 157.16. If the application involves an abandonment of facilities or service, it must conform to the additional requirements prescribed in § 157.18.

(b) General content of application. Each application filed other than an application for permission and approval to abandon pursuant to section 7(b) shall set forth the following information:

(1) The exact legal name of applicant; its principal place of business; whether an individual, partnership, corporation, or otherwise; State under the laws of which organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the application are to be addressed.

(2) The facts relied upon by applicant to show that the proposed service, sale, operation, construction, extension, or acquisition is or will be required by the present or future public convenience and necessity.

(3) A concise description of applicant's existing operations.



**(4)**A concise description of the proposed service, sale, operation, construction, extension, or acquisition, including the proposed dates for the beginning and completion of construction, the commencement of operations and of acquisition, where involved.

**(5)**A full statement as to whether any other application to supplement or effectuate applicant's proposals must be or is to be filed by applicant, any of applicant's customers, or any other person, with any other Federal, State, or other regulatory body; and if so, the nature and status of each such application.

**(6)**A table of contents which shall list all exhibits and documents filed in compliance with §§ 157.5 through 157.18, as well as all other documents and exhibits otherwise filed, identifying them by their appropriate titles and alphabetical letter designations. The alphabetical letter designations specified in §§ 157.14, 157.16, and 157.18 must be strictly adhered to and extra exhibits submitted at the volition of applicant shall be designated in sequence under the letter Z (Z1, Z2, Z3, etc.).

**(7)**A form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this chapter.

**(8)**For applications to construct new facilities, detailed cost-of-service data supporting the cost of the expansion project, a detailed study showing the revenue responsibility for each firm rate schedule under the pipeline's currently effective rate design and under the pipeline's proposed rates, a detailed rate impact analysis by rate schedule (including by zone, if applicable), and an analysis reflecting the impact of the fuel usage resulting from the proposed expansion project (including by zone, if applicable).

**(c)**Requests for shortened procedure. If shortened procedure is desired a request therefor shall be made in conformity with § 385.802 of this chapter and may be included in the application or filed separately.

**(d)**Landowner notification. (1) For all applications filed under this subpart which include construction of facilities or abandonment of facilities (except for abandonment by sale or transfer where the easement will continue to be used for transportation of natural gas), the applicant shall make a good faith effort to notify all affected landowners and towns, communities, and local, state and federal governments and agencies involved in the project:

**(i)**By certified or first class mail, sent within 3 business days following the date the Commission issues a notice of the application; or

**(ii)**By hand, within the same time period; and

**(iii)**By publishing notice twice of the filing of the application, no later than 14 days after the date that a docket number is assigned to the application, in a

daily or weekly newspaper of general circulation in each county in which the project is located.

**(2)**All affected landowners includes owners of property interests, as noted in the most recent county/city tax records as receiving the tax notice, whose property:

- (i)**Is directly affected (i.e., crossed or used) by the proposed activity, including all facility sites (including compressor stations, well sites, and all above-ground facilities), rights of way, access roads, pipe and contractor yards, and temporary workspace;
- (ii)**Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed facility site or right-of-way which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of the proposed construction work area;
- (iii)**Is within one-half mile of proposed compressors or their enclosures or LNG facilities; or
- (iv)**Is within the area of proposed new storage fields or proposed expansions of storage fields, including any applicable buffer zone.

**(3)**The notice shall include:

- (i)**The docket number of the filing;
- (ii)**The most recent edition of the Commission's pamphlet that explains the Commission's certificate process and addresses the basic concerns of landowners. Except: pipelines are not required to include the pamphlet in notifications of abandonments or in the published newspaper notice. Instead, they should provide the title of the pamphlet and indicate its availability at the Commission's Internet address;
- (iii)**A description of the applicant and the proposed project, its location (including a general location map), its purpose, and the timing of the project;
- (iv)**A general description of what the applicant will need from the landowner if the project is approved, and how the landowner may contact the applicant, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;
- (v)**A brief summary of what rights the landowner has at the Commission and in proceedings under the eminent domain rules of the relevant state. Except: pipelines are not required to include this information in the published newspaper notice. Instead, the newspaper notice should provide the Commission's Internet address and the telephone number for the Commission's Office of External Affairs; and

(vi) Information on how the landowner can get a copy of the application from the company or the location(s) where a copy of the application may be found as specified in § 157.10.

(vii) A copy of the Commission's notice of application, specifically stating the date by which timely motions to intervene are due, together with the Commission's information sheet on how to intervene in Commission proceedings. Except: pipelines are not required to include the notice of application and information sheet in the published newspaper notice. Instead, the newspaper notice should indicate that a separate notice is to be mailed to affected landowners and governmental entities.

(4) If the notice is returned as undeliverable, the applicant will make a reasonable attempt to find the correct address and notify the landowner.

(5) Within 30 days of the date the application was filed, applicant shall file an updated list of affected landowners, including information concerning notices that were returned as undeliverable.

(6) If paragraph (d)(3) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

## Statutory Authority

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### AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

[15 U.S.C. 717](#)-717w, 3301-3432; [42 U.S.C. 7101](#)-7352.

## History

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[17 FR 7386, Aug. 14, 1952, as amended by 22 FR 2882, Apr. 24, 1957; [24 FR 9474](#), Nov. 25, 1959; [29 FR 4876](#), Apr. 7, 1964; [31 FR 432](#), Jan. 13, 1966; [47 FR 19057](#), May 3, 1982; [50 FR 40345](#), Oct. 3, 1985; [53 FR 15028](#), Apr. 27, 1988; [53 FR 49653](#), Dec. 9, 1988; [64 FR 26572, 26604](#), May 14, 1999; [64 FR 54522, 54535](#), Oct. 7, 1999; [64 FR 57374, 57390](#), Oct. 25, 1999; [65 FR 15234, 15238](#), Mar. 22, 2000; [68 FR 52089, 52095](#), Sept. 2, 2003; [69 FR 32436, 32439](#), June 10, 2004; [71 FR 63680, 63692](#), Oct. 31, 2006; [72 FR 59939, 59942](#), Oct. 23, 2007; [75 FR 43400, 43405](#), July 26, 2010; [77 FR 4891, 4894](#), Feb. 1, 2012]

## Annotations

## Notes

**[EFFECTIVE DATE NOTE:**

[77 FR 4891, 4894](#), Feb. 1, 2012, amended paragraph (a)(5), effective Feb. 1, 2012.]

**Case Notes**

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**LexisNexis® Notes**

Case Notes Applicable to Entire Part

Energy & Utilities Law : Administrative Proceedings : Rehearings

Energy & Utilities Law : Administrative Proceedings : U.S. Federal Energy Regulatory Commission : Duties & Powers

**Case Notes Applicable to Entire Part**[Part Note](#)**Energy & Utilities Law : Administrative Proceedings : Rehearings**

[Altamont Gas Transmission Co. v. Ferc, 965 F.2d 1098, 1992 U.S. App. LEXIS 12961](#)  
(DC Cir June 9, 1992).

**Overview:** *A gas company failed to show that the decision of the Federal Energy Regulatory Commission denying its application for authority to construct a pipeline was arbitrary and capricious because the gas company's application was incomplete.*

- As the Federal Energy Regulatory Commission assesses a project's viability in the light of conditions all the way from supplier to user, it requires the applicant to provide information on all the links of the chain on which it depends, including interdependent applications. [18 C.F.R. §§ 157.6, 157.13\(c\)](#). [Go To Headnote](#)

**Energy & Utilities Law : Administrative Proceedings : U.S. Federal Energy Regulatory Commission : Duties & Powers**

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## **Research References & Practice Aids**

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### **NOTES APPLICABLE TO ENTIRE TITLE:**

CROSS REFERENCES: Applications and entries conflicting with lands reserved or classified as power sites, or covered by power applications: See Public Lands, Interior, 43 CFR subpart 2320.

Interstate Commerce Commission: See Transportation, 49 CFR chapter X.

Irrigation projects; electrification, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 175

Regulations of the Bureau of Land Management relating to rights-of-way for power, telephone, and telegraph purposes: See Public Lands, Interior, 43 CFR Group 2800.

Rights-of-way over Indian lands: See Indians, 25 CFR parts 169, 170, and 265.

Securities and Exchange Commission: See Commodity and Securities Exchanges, 17 CFR chapter II.

Withdrawal of public lands: See Public Lands, Interior, 43 CFR Group 2300.

### **NOTES APPLICABLE TO ENTIRE CHAPTER:**

ABBREVIATIONS: The following abbreviations are used in this chapter: M.c.f.=Thousand cubic feet. B.t.u.=British thermal units. ICC=Interstate Commerce Commission.

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Notice terminating proceedings, see: [73 FR 79316](#), Dec. 29, 2008.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Policy Statements, see: [74 FR 37098](#), July 27, 2009.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Availability of Final Report, see: [82 FR 50517](#), Nov. 1, 2017.]

**NOTES APPLICABLE TO ENTIRE PART:**

[PUBLISHER'S NOTE: For Federal Register citations regarding Part 157 Orders, see: [75 FR 4689](#), Jan. 29, 2010.]

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End of Document

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

## BOLD ALLIANCE

208 S. Burlington Ave., Ste 103, Box 325  
Hastings, NE 68901

# BOLD EDUCATIONAL FUND

208 S. Burlington Ave., Ste 103, Box 325  
Hastings, NE 68901

# FRIENDS OF NELSON COUNTY

P.O. Box 33  
Nellysford, VA 22958

Case No. 17-1822

**CAROLYN MAKI, WILLIAM MAKI, EJ MAKI**

2228 Rockfish Valley Highway

**JAMES AND KATHERINE MCLEAN**

696 Vance Lane  
Warm Springs, VA

**LOUIS & YVETTE RAVINA**

3383 Churchville Ave  
Staunton, VA 24401

**RICHARD (DICK) AVERITT III**

## On route 151 across from Bold Rock

WILLIAM S. MOORE AND CAROL M. MOORE

**TRUSTEES OF THE MOORE REVOCABLE TRUST**

2594 Bryant Mountain Road,  
Roseland, VA 22967

HERSHEL AND DARLENE SPEARS

2215 Spruce Creek Lane,  
Nellysford, VA 22958

**JONATHAN ANSELL AND PAMELA  
FARNHAM**

159 Fortune's Point Lane,  
Roseland, VA 22967

**LORA & VICTOR BAUM**

368 Fern Gully Lane  
Warm Springs, VA 24484

**DEMIAN K. JACKSON; BRIDGET K. HAMRE  
(AS MEMBERS OF NELSON COUNTY  
CREEKSIDE, LLC )**

106 Starvale Lane.,  
Shipman, VA 22971

**HORIZONS VILLAGE PROPERTY OWNERS  
ASSOCIATION**

P.O. Box 122  
Nellysford, VA 22958  
Common land and roads within Horizons Village  
Subdivision in Nelson County.  
No street address.

**ANNE AND KEN NORWOOD**

3509 Stagebridge Rd  
Lovingston, VA 22949

**CAROLYN FISCHER**

184 Mountain Field Trail  
Nellysford, VA

**PEARL L. FINCH**

Near intersection of NC HWY 581 and Renfrow  
Road,  
Wilson County, NC

**HEATHER LOUISE FINCH**

Near intersection of NC HWY 581 and Renfrow  
Road,  
Wilson County, NC

**WADE RAYMOND FINCH**

near intersection of NC HWY 581 and Renfrow Road,  
Wilson County, NC

**RANDY AND KATHLEEN FORBES**

TBD Deerfield Rd  
Millboro, VA



<b>TODD RATH</b>	:
462 Winery Lane	:
Roseland, VA 22967	:
	:
<b>W. MARVIN WINSTEAD, JR.</b>	:
540 Sandy Cross Rd. ,	:
Nashville, NC 27856	:
	:
<b>SUSAN LAZERSON &amp; CLIFFORD SAVELL</b>	:
14 Crystal Lane,	:
Faber, VA 22938	:
	:
<b>BILL AND LYNN LIMPert</b>	:
250 Fern Gully Lane	:
Warm Springs, VA 24484	:
	:
<b>WADE A. &amp; ELIZABETH G. NEELY</b>	:
10190 Deerfield Road,	:
Millboro, Virginia 24460	:
	:
<b>NANCY L AVERY</b>	:
195 Flying Eagle Ct.	:
Nellysford, VA.	:
Nelson County Tax Map 21 13 14A	:
	:
<b>NANCY &amp; SHAHIR KASSAM-ADAMS</b>	:
360 Laurel Lane,	:
Lovington VA 22949	:
	:
<b>ROBERT TURNER AND STEPHANIE BARTON</b>	:
6237 Laurel Rd,	:
Faber, VA 22971	:
Rt 639 Tax Map 59 A 29 30 31	:
	:
<b>JAMES A. HARDEE</b>	:
8431 Heathsville Rd.,	:
Enfield, N.C. 27823	:
	:
<b>HAZEL RHAMES (TRUSTEE - JOE RHAMES)</b>	:
Gullysville Lane	:
	:
<b>JOE POLAND</b>	:
5740 Old Bailey Hwy,	:
Nashville NC 27856	:
	:

**DAWN AVERITT**

330 Grace Glen,  
Nellysford, VA 22958

**MARY ELLEN RIVES**

10239 Bottom Creek Road,  
Bent Mountain, VA. 24059

**ANNE WAY AND STEPHEN BERNARD**

7879 Grassy Hill Rd  
Boones Mill VA 24065

**GEORGIA HAVERTY; DOE CREEK FARM**

412 Doe Creek Farm Road

**BRENDA LYNN WILLIAMS**

261 Winding Way Drive,  
Newport, VA 24128

**SERINA GARST, PRESIDENT OF  
OCCANNECHI, INC.**

1600 Cahas Mountain Road (farm land - no actual  
street address)

**JERRY & JEROLYN DEPLAZES**

291 Seven Oaks Road,  
Newport VA 24128-3558

**NEWPORT DEVELOPMENT COMPANY, LLC**

Winding Way Road,  
Newport, VA 24128

**CLIFFORD A. SHAFFER**

249 Brookside Lane,  
Newport, VA 24128

**TAMARA HODSDEN**

237 Clover Hollow Rd.  
Newport, VA 24128

**FRANK S AND KATHERINE A QUINN**

215 Zells Mill Rd.,  
Newport, VA 24128

**CHARLES F FLORA & STEPHANIE M FLORA** :  
1906 Arden Rd SW :  
Roanoke, VA 24015 :

**CHARLES F FLORA & STEPHANIE M FLORA** :  
Cahas Mountain Road; :  
Tax Map Id - 038 00-020 02 :

**BENNY L. HUFFMAN** :  
606 Blue Grass Trail, :  
Newport, VA 24128-3556, :  
Tract # VA-GI-5779 :

**IAN ELLIOTT REILLY & CAROLYN** :  
**ELIZABETH REILLY** :  
**AND DAVE J. WERNER & BETTY B. WERNER** :  
404 Old Mill Creek Lane, :  
Rocky Mount, VA 24151 :

**MARY E. AND BRUCE M. COFFEY** :  
10303 Russwood Road, :  
Bent Mountain, VA :

**JACQUELINE J. LUCKI** :  
10289 Russwood Road, :  
Bent Mountain, VA 24059 :

**DAVID G. AND KAREN M. YOLTON** :  
8165 Virginia Ave., :  
Newport, VA 24128 :

**CLARENCE B. GIVENS AND KAROLYN W.** :  
**GIVENS** :  
199 Leffel Lane, :  
Newport, VA 24128 :

**WALTER AND JANE EMBREY** :  
495 Signal Hill Drive, :  
Callaway, VA 24067 :

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10027 Dry Run Road,  
Burnsville, VA 24487

**KEITH & MERRIFIELD EHRHARD**

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Nellysford, VA 22958

**IRENE S ELLIS, TRUSTEE, RANDOLPH H.** :  
**LEECH, IRENE E. LEECH, MARGARET ANNE** :  
**MARTIN, TIMOTHY MARTIN** :  
9161 West James Anderson Hwy., :  
Buckingham, VA 23921 :  
:  
**JOHN C GEARY** :  
714 Hotchkiss Rd., :  
Churchville, VA 24421 :  
:  
**GEORGE SPROUL** :  
744 West Augusta Rd, :  
West Augusta, VA 24485 :

v.

**FEDERAL ENERGY REGULATORY**  
**COMMISSION**  
888 First Street, N.E.  
Washington D.C. 20426

and

**CHAIRMAN NEIL CHATTERJEE,**  
**COMMISSIONER CHERYL LAFLEUR,**  
**COMMISSIONER ROBERT POWELSON** in their  
official capacities  
as Commissioners of the Federal Energy  
Regulatory Commission  
888 First Street, N.E.  
Washington D.C. 20426

**MOUNTAIN VALLEY PIPELINE**  
Serve Registered Agent:  
CT Corporation System  
4701 Cox Road Ste. 285  
Glen Allen, VA 23060

**ATLANTIC COAST PIPELINE LLC**  
CT Corporation System  
4701 Cox Road Ste. 285  
Glen Allen, VA 23060

DEFENDANTS

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**BOLD ALLIANCE ET. AL. FIRST AMENDED COMPLAINT  
FOR DECLARATORY RELIEF**

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiffs Bold Alliance, Bold Educational Fund, Friends of Nelson, and the named individual landowners file this First Amended Complaint against Defendants Federal Energy Regulatory Commission (FERC); FERC Chairman Neil Chatterjee and FERC Commissioners Cheryl LaFleur and Robert Powelson in their official capacities; Mountain Valley Pipeline, LLC; and Atlantic Coast Pipeline LLC. Plaintiffs allege and pray as follows:

**INTRODUCTION**

1. In the 80 years since the Natural Gas Act was enacted, the natural-gas industry has changed dramatically. With the deregulation of natural-gas markets beginning in the 1980s, the industry has transformed, evolving from a heavily regulated enterprise subject to strict oversight by regulators to a free market dominated by unregulated players in search of lucrative opportunities, including spot-market sales, participation in gas-commodities markets, and export. Yet even as the role of interstate pipelines and the nature of the natural-gas industry have changed, the eminent-domain provisions of the Natural Gas Act have not. In light of changes in the gas industry and the evolution of FERC policies and practices related to regulation of pipelines, FERC's Certificate Program and its application to the eminent-domain provisions of the Natural Gas

Act no longer further a truly public use and instead unlawfully opens the gate to allow private gas companies to exercise condemnation powers far in excess of what Congress ever intended or what the Fifth Amendment allows.. This statutory and constitutional challenge is long overdue.

2. This lawsuit challenges the process by which FERC confers eminent-domain powers on private, for-profit natural-gas pipeline companies. Under section 7f(h) of the Natural Gas Act (15 U.S.C. §§717 *et seq.*), any company that obtains a “certificate of convenience and necessity” (“CCN”) from FERC has the power to condemn. The only way this arrangement can satisfy statutory requirements and the Constitution is if FERC provides procedural due process to condemnees and grants certificates only those projects that serve a “public use.”

3. FERC’s certificate program and its gatekeeping role in safeguarding the use of eminent domain under the NGA fall short in numerous ways. By way of example:

- FERC does not require pipeline companies to demonstrate their projects serve a public use.
- FERC does not inform potentially impacted landowners whose property will be taken by a pipeline through eminent domain that they must intervene to avoid waiving the right to challenge FERC’s grant of a certificate.



- FERC grants not only CCNs but also “conditioned certificates” and “blanket certificates,” which are not statutorily authorized and which give pipeline companies eminent-domain powers far beyond statutory and constitutional limits.
- FERC withholds information from landowners that they could use to refute project need.
- FERC does not require companies to post bonds or otherwise demonstrate sufficient assets before commencing projects, thus creating a risk that those private, for-profit companies will not actually and ultimately pay constitutionally mandated just compensation for the property they take.

4. Collectively, these shortcomings—and others—entail that FERC’s certificate program violates the NGA itself as well as constitutional provisions including the Due Process and Takings Clauses of the Fifth Amendment (among others), resulting in a delegation of extraordinary eminent-domain powers to private companies far beyond what Congress ever intended and an assault on landowners’ property rights.

5. These shortcomings impact the landowner Plaintiffs in this case personally. Now that FERC has issued Certificates of Necessity and Convenience to MVP and ACP, the individual Plaintiffs along with members of Plaintiff BOLD Alliance face actual or imminent condemnation

proceedings for two pipeline projects—the proposed Atlantic Coast Pipeline (“ACP”) and Mountain Valley Pipeline (“MVP”). Indeed, just last week, MVP filed condemnation complaints in federal district court for the Western District of Virginia (Docket No. 2:17-cv-04214) and the Southern District of West Virginia (Docket No. 7:17cv-492) against approximately hundreds of landowners in West Virginia and Virginia.

6. This lawsuit seeks a declaration that FERC’s certificate program, as implemented, violates the Natural Gas Act and the U.S. Constitution. As relief, Plaintiffs ask the Court to declare the MVP and ACP certificates unlawful under the NGA and the United States Constitution and to enjoin MVP and ACP from proceeding with eminent-domain actions under the unlawful FERC certificates. Further, the Court should prohibit FERC from awarding any pipeline certificates under its flawed program until the Commission corrects the statutory and constitutional deficiencies in the certificate process. Unless the Court grants this relief, Plaintiffs and others similarly situated will have their statutory protections and constitutional rights violated.

### **JURISDICTION AND VENUE**

7. This action arises under the Due Process and Takings Clauses of the Fifth Amendment as well as separation-of-powers provisions of the United States Constitution. It also arises under the Natural Gas Act, 15

U.S.C. §717f(h). Accordingly, the Court has jurisdiction under 28 U.S.C. §1331. The Court also has jurisdiction under 15 U.S.C. §717u, which establishes exclusive jurisdiction in federal district courts for violations of the Natural Gas Act and rules and regulations arising thereunder.

8. Plaintiffs seek a declaratory judgment under the federal Declaratory Judgments Act, 28 U.S.C. §2201-2202, and appropriate injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

9. Venue is proper in the federal district court for the District of Columbia pursuant to 28 U.S.C. §1391(e)(1)(A) and 15 U.S.C. §717u. Defendant FERC is an agency of the United States and resides in this judicial district, while Mountain Valley LLC and Atlantic Coast Pipeline LLC have submitted to the processing of its certificate application in the District of Columbia.

10. The individually named landowners have standing to bring this action because they own realty in the path of the MVP and ACP Projects. Now that FERC has granted the certificates to MVP and ACP, the individual landowner Plaintiffs' realty will be subject to eminent domain. The landowner Plaintiffs who reside along the MVP line have been named as defendants in condemnation lawsuits filed by MVP in federal district courts, while ACP's condemnation actions are imminent.

11. Plaintiff Bold Appalachia has organizational standing because its members are directly impacted by the MVP and ACP projects and have individual standing to sue.

12. This Court can and must act now to grant the declaratory and injunctive relief Plaintiffs seek because, without it, MVP and ACP rely on statutorily and constitutionally deficient certificates to proceed with condemnation lawsuits in federal courts with no opportunity for landowners to mount a challenge. Meanwhile, FERC will persist in awarding statutorily and constitutionally flawed certificates.

13. This Court has jurisdiction to entertain the Plaintiffs' claims which specifically challenge the statutory and constitutional soundness of the MVP and ACP certificates and more broadly, the interpretation and as-applied constitutionality of the Natural Gas Act and systemic flaws in FERC's implementation thereof. FERC itself has already disclaimed jurisdiction over a determination of the constitutionality of the Natural Gas Act in the MVP and ACP Certificate Orders. Civil Action No. 16-cv-416 (March 2017) (addressing challenges to FERC's systemic bias in funding raised by intervenors in certificate proceeding at FERC).

14. Further, Plaintiffs need not seek rehearing and judicial review of the FERC certificates under section 717r(a) and (b) of the Natural Gas Act, 15 U.S.C. §717r, nor wait for MVP and ACP to actually take their

property in a condemnation proceeding in order to bring this suit. The Supreme Court of the United States allows “individuals threatened with a taking to seek a declaration of the constitutionality of the disputed governmental action before potentially uncompensable damages are sustained.” *See Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59 (1978) (allowing declaratory relief for potential taking). Further, at least nine of the Plaintiffs did not intervene in the FERC process and therefore are foreclosed from availing themselves of the procedural remedies set forth in section 717r. *See* 15 U.S.C. §717r(a) (providing that only parties may seek rehearing which is jurisdictional prerequisite to judicial review).

## **PARTIES**

### **I. Plaintiffs**

15. Plaintiff Bold Education Fund is a 501(c)(3) organization formed under Nebraska law to educate the public about eminent-domain issues and the protection of water and climate. The Bold Education Fund includes as members landowners in the Appalachia Region whose property will be subject to eminent domain by the MVP and ACP Projects, including some of the individually named landowners in this suit.

16. The Bold Alliance, a 501(c)(4) organization formed under Nebraska Law, advocates on behalf of impacted landowners and the general public to stop the use of eminent domain for private gain.

17. Plaintiff Friends of Nelson is a citizen-run, community-based membership organization dedicated to the protection of property rights, property values, rural heritage and the environment for all the citizens of Nelson County, Virginia. Some of its members are individual landowners named as Plaintiffs in this lawsuit.

18. The individual landowners in this proceeding are: Carolyn Maki and William Maki; James and Katherine McLean; Louis & Yvette Ravina; Richard Averitt III; William S. Moore and Carol M. Moore (Trustees of the Moore Revocable Trust); Hershel and Darlene Spears; Jonathan Ansell and Pamela Farnham; Lora and Victor Baum; Demian K. Jackson and Bridget K. Hamre (members of Nelson County Creekside, LLC); Horizons Village Property Owners Association; Anne and Ken Norwood; Carolyn Fischer; Pearl L. Finch; Heather Louise Finch; Wade Raymond Finch; Randy and Kathleen Forbes; Todd Rath; W. Marvin Winstead Jr.; Susan Lazerson and Clifford Savell; Bill and Lynn Limpert; Wade A. and Elizabeth G. Neely; Nancy L. Avery; Nancy & Shahir Kassam-Adams; Robert Turner; Stephanie Barton, James A. Hardee; Hazel Rhames (Trustee- Joe Rhames); Joe Poland; Dawn Averitt; Mary Ellen Rives; Anne Way and Stephen Bernard; Georgia Haverty - Doe Creek Farm; Brenda Lynn Williams; Serena Garst, President of Occaneechi, Inc; Jerry & Jerolyn Deplazes; Newport Development, LLC; Clifford A. Shaffer; Tamara Hodsden; Frank S. and Katherine A. Quinn; Charles

F. Flora and Stephanie Flora; Benny L. Huffman; Ian Elliott Reilly and Carolyn Elizabeth Reilly and Dave J. Werner and Betty B. Werner; Mary E. and Bruce M. Coffey; Jacqueline J. Lucki; David G. and Karen M. Yolton; Clarence B. Givens and Karolyn W. Givens; Walter and Jane Embrey; Guy W. and Margaret S. Buford; Rebecca Dameron; Keith Wilson; Frank and Jacqueline Biscardi; Wendell & Mary Flora; Reinhard and Ashofteh Bouman; James Gore; Mike Craig; Gerald and Elizabeth Wozniak; Chris and Emily Prosis; Judy Allen; Keith and Merrifield Ehrhard; Irene S. Ellis, Trustee, Randolph H. Leech, Irene E. Leech, Margaret Anne Martin, Timothy Martin; John C. Geary and George Sproul.<sup>1</sup>

19. All of these individual landowners own property that will be crossed by the MVP Project or ACP Project and that will be taken by eminent domain under 15 U.S.C. §717f(h). The individual landowners who live along the MVP Pipeline and are plaintiffs in this action have already been named as defendants in MVP's condemnation actions.

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<sup>1</sup> Attachment 1 to this Complaint lists each landowner's address, the pipeline that will cross their respective property and amount of property that will be impacted by condemnation.

20. While the majority of the landowners who are plaintiffs intervened in the FERC proceeding, at least nine of the landowners have not.<sup>2</sup>

21. The MVP and ACP will directly and adversely impact Plaintiffs. Not only will both projects result in an unconstitutional taking of Plaintiffs' property but the projects will cause direct harm. The projects will forever encumber Plaintiffs' properties even if the pipelines are later abandoned, diminish development potential and property value, raze trees and destroy farms and generally pose risks to the health and safety of the Plaintiffs and the surrounding environment.

## **II. Defendant Federal Energy Regulatory Commission**

22. Defendant Federal Energy Regulatory Commission is an independent agency formed under 42 U.S.C. §7171(a). As of the date of this Complaint, the Commission consists of Acting Chairman Neil Chatterjee and Commissioners Cheryl LaFleur and Robert Powelson.

23. The Commission claims authority under the Natural Gas Act to issue CCNs to companies that propose to construct, operate, and maintain interstate natural-gas pipelines.

## **III. Defendant Mountain Valley Pipeline LLC**

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<sup>2</sup>The landowner plaintiffs who did not intervene in the FERC process are Jacki Lucki, Lyn Limpert, Scott Ballin, Carolyn Maki, Lora Baum, Guy Buford, David Yolton, Ann and Stephen Bernard, Jacqueline Biscardi and George Sproul.



24. Defendant Mountain Valley Pipeline LLC is a private, for-profit limited liability company organized and existing under the laws of Delaware. Mountain Valley is a joint venture between EQT Midstream Partners, LP; NextEra Energy US Gas Assets, LLC; WGL Midstream, Inc.; Vega Midstream MVP LLC; RGC Midstream, LLC; and Con Edison Gas Midstream. Mountain Valley was formed solely to develop the MVP.

#### **IV. Defendant Atlantic Coast Pipeline LLC**

25. Defendant Atlantic Coast Pipeline LLC (Atlantic Coast) is a private, for-profit limited liability company organized under the laws of Delaware with its principal place of business in Richmond, Virginia. Atlantic Coast is a joint venture of Dominion Resources (which has a 45% interest in the venture), Duke Energy (40%), Piedmont Natural Gas Company (10%) and AGL Resources (5%). Atlantic Coast was formed to develop the ACP.

### **FACTUAL BACKGROUND**

#### **I. FERC's Regulatory Policies**

##### **A. Overview**

26. FERC oversees natural-gas companies, which the Natural Gas Act defines as “a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.” 15 U.S.C. §717(c). FERC's responsibilities include rate-setting,

oversight, and, critically, issuance of CCNs authorizing construction and operation of interstate gas pipelines. By statute, any entity that receives a CCN automatically has the power of eminent domain. 15 U.S.C. §717f(h). While the Natural Gas Act confers eminent-domain power on pipelines operating in interstate commerce, it does not confer eminent-domain power on pipelines operating in foreign commerce.

**B. No Public-Use Determination**

27. Because the power of eminent domain attaches to every “holder of a certificate of convenience and necessity” under section 7f(h) of the Natural Gas Act, the constitutionality of the eminent-domain provisions hinges on whether a certificate issued by FERC serves a public use and a public necessity. By its own admission, however, FERC does not consider a determination of “public use” to be a necessary part of a grant of a certificate. *See Transcontinental Pipeline*, 158 FERC ¶ 61,125 (2017). Instead, FERC reasons that its determination of a public necessity is sufficient to allow certificate holders to exercise the power of eminent domain, as Congress has determined that applicants who satisfy FERC’s public-necessity criteria will build or operate interstate pipelines that, under the NGA, comply with the Constitution’s public-use requirement.

28. In 1999, FERC adopted its Certificate Policy Statement,<sup>3</sup> which memorialized FERC's process for evaluating applications for CCNs. As the Certificate Policy Statement sets out, FERC first determines whether there is a need for the project, examining factors including market demand, the amount of pipeline capacity contractually committed, and lack of subsidization by existing ratepayers. FERC's review of need is superficial at best, as FERC does not "look behind precedent agreements" (*see e.g., Transcontinental Gas Pipe Line Co. LLC*, 157 FERC ¶ 61,095, at P. 5 (2016)), even though the Certificate Policy Statement suggests that affiliate contracts are less probative than those negotiated at arms' length.

29. Finally, FERC balances the project's benefits against project impacts to the environment and landowners, using a sliding scale approach to determine whether to grant a certificate.

### **C. No Bond or Asset Requirement**

30. FERC does not require applicants to post bond or to demonstrate assets sufficient to ensure payment of just compensation to landowners. In fact, FERC has explicitly refused requests to condition issuance of a certificate on the project sponsor's posting bond or proving adequate assets. Accordingly, landowners receive no assurance that the

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<sup>3</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), clarified, 90 FERC ¶ 61,128, further clarified, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

private, for-profit entities condemning them will actually pay and ultimately be able to pay just compensation.

**D. Extra-Statutory Certificate Programs**

31. FERC has also implemented “conditioned” and “blanket certificate” programs that are not expressly authorized by the Natural Gas Act.

**1. Conditioned Certificates**

32. Conditioned certificates are nominally issued under section 7f(e) of the Natural Gas Act, which grants FERC the power to “attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.” As a matter of practice, however, FERC routinely includes a standard condition in most certificates that states:

Prior to receiving written authorization . . . to commence construction of any project facilities, [the applicant] shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof.)

In other words, FERC routinely grants certificates for projects that are not yet legally authorized because they depend on the subsequent grant of additional permits by other federal and state agencies.

33. Although FERC characterizes conditioned certificates as “incipient authorizations without force or effect,” (*see e.g., Ruby Pipeline*

*LLC*, 133 FERC ¶61,015 (2010) at P. 18), FERC interprets those certificates as conferring the same power of eminent domain as non-conditioned certificates. FERC has, in fact, expressly refused to restrict eminent-domain powers under conditioned certificates even though they relate to projects that may never receive the proper approvals and therefore may never be constructed at all.

## **2. Blanket Certificates**

34. Pipeline companies can also request “blanket certificate” authority. *See* 18 C.F.R. Part 157, Subpart F. As originally conceived by FERC, the blanket certificate program was intended to enable a natural-gas company to undertake repairs and various routine activities without the need to obtain a case-specific certificate for each individual project.

35. In practice, however, companies have used blanket certificate authority for activities that fall well outside the definition of “routine” as that term is ordinarily understood—including construction of lateral lines, new compressor stations, and other facilities that may extend up to 15 miles from a certificated project, impact previously unaffected properties, impact properties owned by individuals who did not receive the opportunity for notice and hearing as required by the NGA, and serve entirely new purposes. When these activities occur under a blanket certificate, they may

proceed with minimal notice to landowners, with no opportunity for landowners to participate in a hearing or application process at FERC, and without any finding from FERC that the expansions will serve the public convenience.

**E. Notice to Landowners**

36. After a pipeline files an application, FERC publishes notice of the application on its website and in the Federal Register. *See* Attachment 2 (FERC Notices for MVP and ACP). The FERC Notices describe the location and description of the proposed project and explain that “there are two ways to become involved in the Commission’s review of the project”: either by filing a motion to intervene (and becoming a party) or filing comments. The FERC notices, however, do not mention that the proposed pipeline, if approved, may potentially result in a taking of property by eminent domain. *See* Attachment 2.

37. FERC’s regulations also require pipeline applicants to notify potentially impacted landowners directly, either by mail or in person and by publication in local newspapers. 18 C.F.R. §157.6(d). The applicant’s letter must identify the project and docket number, summarize a party’s rights at the Commission and an eminent-domain proceeding, and include the most recent version of FERC’s pamphlet entitled *An Interstate Gas Pipeline on My Property? What Landowners Need to Know*. *See* FERC webpage, at

<https://ferc.gov/resources/guides/gas/gas.pdf>. Although materials that project applicants are required to provide put landowners on notice of a potential condemnation action, critically, they do not explain that a landowner's failure to intervene in the FERC process will result in waiver of potential statutory, constitutional, and other legal challenges to the Certificate itself or to FERC's findings of public use and necessity. Thus, there are serious due-process concerns with theory that 15 U.S.C. §717r is the only vehicle for impacted landowners (including those who never received notice that their property could be taken by eminent domain as a result of the FERC process) to raise constitutional, statutory, and other legal challenges to the FERC process.

## **II. The ACP**

38. The ACP Project consists of (1) approximately 564 miles of 42-inch-diameter pipeline in West Virginia, Virginia, and North Carolina; (2) three new compressor stations providing approximately 125,000 nominal horsepower (hp) of compression; and (3) other minor facilities. *See* ACP Application at 14-15. The ACP Project will have numerous delivery and receipt points to serve shippers. According to ACP's application, the pipeline will carry up to 1.5 million dekatherms/day, bringing gas from the Marcellus region of northern West Virginia Project to Virginia and North Carolina.

39. As the ACP pipeline makes its way through West Virginia, Virginia, and North Carolina, it will traverse mountainous topography and karst-ridden terrain, cut large swaths through hundreds of acres of forest (including the Monongahela National Forest (MNF) and George Washington National Forest (GWNF)), cross more than 1,500 water bodies, and adversely impact wildlife habitat and endangered species. In addition to its substantial and devastating environmental impacts, the ACP Project will jeopardize the safety, economic livelihood, and property values of landowners in its path.

40. On September 18, 2015, ACP applied to FERC for a CCN and a blanket certificate. At the time of application, 96% of ACP's capacity was already subscribed. The contracts for this capacity are with utility companies that are subsidiaries of the ACP's joint venturers, as shown below:

**Table 1. Utilities contracted to ship gas on the Atlantic Coast Pipeline. All but Public Service Company of North Carolina are subsidiaries of companies involved in developing the pipeline.**

Utility	Parent	Contracted capacity (dekatherms/day)
Virginia Power Services	Dominion	300,000
Duke Energy Progress	Duke	452,750
Duke Energy Carolinas	Duke	272,250
Piedmont	Piedmont Natural Gas	160,000
Public Service Company of North Carolina	SCANA Corporation	100,000
Virginia Natural Gas	AGL Resources	155,000

41. On October 2, 2015, FERC published the ACP Application.



42. In May 2017, the Landowners attempted, through the Freedom of Information Act (FOIA) and FERC's Critical Energy Infrastructure Information (CEII) rules, to obtain additional documents that would further corroborate the need for the project and intended use for gas exports. FERC failed to timely process their requests, which remain pending.

43. On October 13, 2017, FERC issued a Certificate for the ACP Project and approved ACP's request for a blanket certificate under Part 157 of FERC's regulations, with the FERC Chair and one Commissioner voting to approve the certificate and one Commissioner dissenting. *Atlantic Coast Pipeline*, 161 FERC ¶ 61,042 (2017). Condition 10 of the Certificate requires ACP to file documentation that it has received all applicable authorizations required under federal law (or evidence thereof) as a prerequisite to commencement of construction. As of the date of the Certificate, ACP had not received numerous federal authorizations including the section 401 water quality certificates from North Carolina and Virginia and U.S. Army Corps of Engineers' section 404 wetlands permit.

44. Also relevant here, the Commission determined that its "public convenience and necessity finding" is equivalent to a "public use" (ACP Certificate Order at 79) but added that the question of the constitutionality

of takings under the Certificate “is beyond our jurisdiction; only the courts can determine whether Congress’ action in passing section 7(h) of the NGA conflicts with the Constitution.” ACP Certificate Order at 81.

45. With the FERC certificate issued, ACP can and will initiate-eminant-domain proceedings against landowners in state or federal district court under section 7f(h) of the Natural Gas Act, 15 U.S.C. §717f(h), seeking immediate possession of the property in advance of payment of compensation.

### **III. The MVP**

46. The MVP Project consists of (1) approximately 301 miles of 42-inch-diameter pipeline in West Virginia and Virginia; (2) three new compressor stations providing approximately 171,600 nominal horsepower (hp) of compression; and (3) other minor facilities. The MVP pipeline extends from an interconnection with Equitrans’s existing pipeline in Wetzel County, West Virginia to a termination point at Transco’s Zone 5 Compressor Station 165 (which is also a gas-trading hub for the mid-Atlantic) near Transco Village in Pittsylvania County, Virginia.

47. As the MVP pipeline makes its way through the mountainous topography of West Virginia and Virginia, it will cut large swaths through hundreds of acres of forest, cross more than 1,000 bodies of water, and traverse miles of treacherous karst-laced terrain. In addition to its

substantial and devastating environmental impacts, the MVP pipeline will jeopardize the safety and economic livelihood of landowners along its path, assaulting their statutorily and constitutionally protected private property rights by taking hundreds of tracts of property for a private enterprise.

48. In late October 2014, MVP initiated the pre-filing application process, an informal review period that enables a project sponsor to “vet” its proposal. At that time, MVP began contacting landowners to survey the properties to assist in preparation of its application and in some instances, to initiate negotiations on easement rights for the proposed pipeline.

49. On October 23, 2015, following the conclusion of the pre-application process, MVP submitted its application under section 7 of the Natural Gas Act seeking a certificate of public convenience and necessity to construct, operate, and maintain the MVP project as well as a blanket certificate. In its application, MVP declared that its primary purpose for constructing the pipeline is to deliver shale gas to Transco Station 165, a gas-trading hub for the Mid-Atlantic Market and a strategic point for serving the growing Mid-Atlantic and southeastern markets, as well as unidentified “existing and future markets” directly along the pipeline route.

50. At or around the time MVP filed its Application, its proposed pipeline was fully subscribed by affiliated shippers who are either producers

and marketers (accounting for 87 percent of contracted capacity) or affiliate utilities (committed to 13 percent of contracted capacity) as summarized in the table below:

**Table 2. All of the shippers on the Mountain Valley Pipeline are affiliates of companies involved in developing the project.**

Pipeline owner	Ownership interest	Shipper	Capacity contracted (dekatherms/day)	Capacity contracted (%)
EQT Midstream Partners, LP	45.5%	EQT Energy, LLC	1,290,000	64.5%
NextEra Energy US Gas Assets, LLC	31%	USG Properties Marcellus Holdings, LLC	250,000	12.5%
Con Edison Gas Midstream, LLC	12.5%	Consolidated Edison Company of New York	250,000	12.5%
WGL Midstream, Inc.	7%	WGL Midstream, Inc.	200,000	10%
Vega Midstream MVP LLC	3%			
RGC Midstream LLC	1%	Roanoke Gas Company	10,000	0.5%

51. On November 5, 2015, FERC published notice of MVP's Application.

52. On September 16, 2016, FERC issued a Draft Environmental Impact Statement for the Project. The DEIS also concluded that the project would not export gas, notwithstanding comments that had identified a contract between WGL Midstream, one of the project shippers, to supply an Indian company with 430,000 dt/day of LNG gas.

53. In May 2017, the Landowners attempted, through the Freedom of Information Act (FOIA) and FERC's Critical Energy Infrastructure Information (CEII) rules, to obtain additional documents that would

further corroborate the project's intended use for gas exports. FERC did not timely process their requests, which remain pending.

54. On October 13, 2017, FERC issued a Certificate for the MVP Project and approved MVP's request for a blanket certificate under Part 157 of FERC's regulations, with the FERC Chair and one Commissioner voting to approve the certificate and one Commissioner dissenting. *Mountain Valley Pipeline*, 161 FERC ¶61,043 (2017). Condition 9 of the Certificate requires ACP to file documentation that it has received all applicable authorizations required under federal law (or evidence thereof) as a prerequisite to commencement of construction. As of the date of the Certificate, MVP had not received numerous federal authorizations including the section 401 water quality certificates from Virginia and U.S. Army Corps of Engineers' section 404 wetlands permit.

55. Also relevant here, the Commission determined that its "public convenience and necessity finding" is equivalent to a "public use" (MVP Certificate Order at 61), but added that the question of the constitutionality of takings under the Certificate "is beyond our jurisdiction; only the courts can determine whether Congress' action in passing section 7(h) of the NGA conflicts with the Constitution. MVP Certificate Order at 63. With a certificate in hand, MVP has initiated condemnation actions against hundreds of landowners along the pipeline route in West Virginia and

Virginia under section 7f(h) of the Natural Gas Act, seeking immediate possession of the property in advance of the payment of compensation.

56. Now that the Commission has declined jurisdiction over the constitutionality of the takings authorized by the projects and the takings are imminent, Plaintiffs seek relief before this Court on the claims below.

### **CAUSES OF ACTION**

#### **COUNT 1: Declaratory Judgment That FERC's Practice of Granting Certificates Conditioned on Subsequent State or Federal Approvals—But Allowing for the Exercise of Eminent Domain—Exceeds FERC's Authority Under the Natural Gas Act.**

57. Plaintiffs incorporate the preceding paragraphs by reference.

58. 15 U.S.C. §717f gives FERC “the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.”

59. FERC has an established pattern and practice of issuing certificates of public convenience and necessity for pipelines that are conditioned on subsequent state and federal approvals. (Both the MVP and ACP certificates contain such a condition. *See* MVP Certificate, Condition No. 9, ACP Certificate, Condition No. 10.)

60. Congress did not delegate the power of eminent domain to private entities that have failed to obtain required state and federal

approvals for a natural-gas pipeline. Even FERC itself characterizes conditioned certificates as “incipient authorizations without force or effect.”

61. Because a conditioned certificate will never ripen into a final authorization if state and federal permits are denied, any taking of property under a conditioned certificate would be premature and unnecessary for the project—and would violate NGA §717f’s requirement that takings be necessary and also raise serious constitutional problems, as explained in Count 4.

62. The proper interpretation of “reasonable terms and conditions” in 15 U.S.C. §717f(e) is that FERC may impose “conditions” on pipeline activity in the sense of “limitations” but that certificates that are “conditional” in the sense of needing to satisfy prerequisites (and that, per FERC, are “incipient authorizations without force or effect”) cannot support the exercise of eminent domain under the NGA.

63. Plaintiffs seek a declaratory judgment that FERC’s practice of issuing certificates conditioned on the issuance of state or federal approvals—while still purporting to allow the certificate holder to exercise eminent domain authority under 15 U.S.C. §717f(h)—violates the NGA.

**COUNT 2: Declaratory Judgment That Certificate Holders (Including ACP and MVP) Whose Certificates Are Conditioned on Subsequent State or Federal Approvals Cannot Exercise the Power of Eminent Under the Natural Gas Act.**

64. Plaintiffs incorporate the preceding paragraphs by reference.

65. Plaintiffs seek a declaratory judgment that holders of conditional certificates (including ACP and MVP) cannot exercise the power of eminent domain under the NGA when their certificates are conditioned on subsequent state or federal approvals before pipeline construction can begin.

**COUNT 3: Declaratory Judgment That 15 U.S.C §717f(h)'s "Any Holder of a Certificate of Public Convenience and Necessity" Language Does Not Include Holders of Certificates That Are Conditioned on Subsequent State or Federal Approvals.**

66. Plaintiffs incorporate the preceding paragraphs by reference.

67. As explained in Count 4 and elsewhere, FERC has a practice of issuing certificates of public convenience and necessity to applicants that have not yet obtained all necessary state and/or federal permits to commence construction.

68. FERC takes the position that holders of such "conditional" certificates are entitled to exercise eminent domain under 15 U.S.C. §717f(h), which provides that "any holder of a certificate of public convenience and necessity" can acquire property by eminent domain.

69. Plaintiffs seek a declaration that this interpretation of 15 U.S.C. §717f(h) is incorrect and that, under a correct interpretation of the



statute, only holders of non-conditional certificates are entitled to exercise eminent domain.

70. This is the correct interpretation of 15 U.S.C. §717f(h) for two reasons.

- a. First, as FERC itself recognizes, conditional certificates are “incipient authorizations without force or effect.” It follows that they cannot justify private entities’ exercise of the awesome power of eminent domain.
- b. Second, as further explained in the following Count, permitting such conditional certificate holders to take private property creates significant constitutional concerns.

**COUNT 4: Declaratory Judgment That FERC’s Practice of Granting Certificates Conditioned on Subsequent State or Federal Approvals—But Allowing for the Exercise of Eminent Domain—Violates the Fifth Amendment’s Takings Clause.**

71. Plaintiffs incorporate the preceding paragraphs by reference.

72. The Fifth Amendment forbids the taking of private property if it is unnecessary for public use. An authorization of eminent domain under a conditioned certificate violates the Fifth Amendment because until the conditions are met, the property taken is unnecessary because the pipeline cannot construct the project.

73. 15 U.S.C. §717f gives FERC “the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.”

74. FERC has an established pattern and practice of issuing certificates of public convenience and necessity for pipelines that are conditioned on subsequent state and federal approvals. (Both the MVP and ACP certificates contain such a condition. *See* MVP Certificate, Condition No. 9, ACP Certificate, Condition No. 10.)

75. Congress did not delegate the power of eminent domain to private entities that have failed to obtain required state and federal approvals for a natural-gas pipeline. Even FERC itself characterizes conditioned certificate as an “incipient authorizations without force or effect.”

76. Because a conditioned certificate will ripen into a final authorization if state and federal permits are denied, any taking of property under a conditioned certificate is premature and unnecessary for the project, in violation of the Fifth Amendment’s requirement that takings be for a “public use.” Property is not taken for “public use” when the property is not needed for a project that has not received public approval and therefore will not be built.

77. Plaintiffs seek a declaratory judgment that FERC’s practice of issuing certificates conditioned on the issuance of state or federal approvals—while still purporting to allow the certificate holder to exercise eminent domain authority under 15 U.S.C. §717f(h)—violates the Fifth Amendment of the Constitution.

**COUNT 5: Declaratory Judgment That, Under the Natural Gas Act, FERC Cannot Grant Certificates Whose Sole or Primary Purpose Is to Benefit Foreign Commerce.**

78. Plaintiffs incorporate the preceding paragraphs by reference.

79. Under 15 U.S.C. §717f, any certificate of convenience and necessity must be for the transportation “in interstate commerce” of natural gas.

80. The Act defines “interstate commerce” as commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.”

81. Plaintiffs seek a declaratory judgment that the Natural Gas Act does not allow FERC to grant certificates of convenience and necessity whose sole or primary purpose is to benefit foreign commerce.

**COUNT 6: Declaratory Judgment That Granting “Blanket Certificates” Involving Property Located Outside the Certificated Project Exceeds FERC’s Statutory Authority Under the Natural Gas Act.**

82. Plaintiffs incorporate the preceding paragraphs by reference.

83. Section 7(c) of the NGA bars “the construction or expansion of any facilities” for the transportation or sale of natural gas, or the acquisition or operation of any such facilities or extensions, unless the Commission issues a certificate specifically “authorizing such acts or operations.” 15 U.S.C. §717f(c)(1)(A).

84. The Commission’s authority to grant a certificate under Section 7(c) is also limited to approval of an “operation, sale, service, extension, or acquisition *covered by the application*”—that is, the activity in question must have actually been “proposed” by the applicant and so considered by the Commission. *Id.* §717f(e) (emphasis added).

85. Approval of particular activities is further restricted to those that, upon the Commission’s finding, are or “will be required by the present or future public convenience and necessity.” *Id.*

86. Even so, FERC has arrogated to itself the power to issue “blanket certificates” under Part 157, Subpart F of its regulations to allow blanket certificate holders to perform certain routine construction activities and operations, including future facility construction, operation, and abandonment.

87. Without any need for further Commission approval, the “blanket” certificate holder is allowed, subject only to a per-project cost

limitation just shy of \$12 million, to do any of the following, among other “automatically authorized” acts:

- “acquire, construct, replace, or operate any eligible facility,” defined to mean any facility within the Commission’s statutory jurisdiction “that is necessary to provide service within existing certificated levels,” subject to certain narrow exceptions, 18 C.F.R. §§157.208(a), 157.202(b)(2)(i);
- “make miscellaneous rearrangements of any facility,” including “relocation of existing facilities” for various reasons including highway construction, erosion, or “encroachment of residential, commercial, or industrial areas,” *id.* §§157.208(a), 157.202(b)(6);
- “acquire, construct, replace, modify, or operate any delivery point,” *id.* §157.211(a)(1);
- “acquire, construct, modify, replace, and operate facilities for the remediation and maintenance of an existing underground storage facility,” *id.* §157.213(a); and
- “acquire, construct and operate natural gas pipeline and compression facilities . . . for the testing or development of underground reservoirs for the possible storage of gas,” *id.* §157.215.

88. The “facilities” to which these activities apply include both “auxiliary” ones installed to “obtain[] more efficient or more economical operation” and replacements—but only to the extent that such “auxiliary” or replacement facilities are *not* located within the certificated pipeline right-of-way or an already authorized facility site. *See id.* §157.202(b)(3). That is, the grant of blanket authority is expressly—almost exclusively—directed toward projects that the Commission knows, to a

virtual certainty, will *not* be where the applicant describes the pipeline project as being located.

89. In connection with these “blanket certificate” activities, the blanket certificate holder has effectively unrestricted authority to exercise eminent-domain power to force sales of private property, including of properties outside the areas described in the certificate holder’s application. 15 U.S.C. §717f(h).

90. Under the guise of “replacement” or “rearrangement,” a certificate holder can even move segments of its main line to different property than the project footprint FERC has approved. And whenever it does so, the blanket-certificate holder can seize whatever property it wants from nearby landowners through eminent domain, without any oversight by FERC.

91. FERC has granted such blanket certificates to MVP and ACP.

92. In light of the application and finding requirements of the NGA, Plaintiffs seek a declaration that FERC’s authority does not extend to blanket approvals of unknown future extensions, expansions, rearrangements, or replacements, at least where such actions are not limited to the pipeline footprint actually proposed by an applicant and considered and approved by FERC.

**COUNT 7: Declaratory Judgment That Granting “Blanket Certificates” Involving Property Located Outside the**

**Certificated Project Violates FERC's Statutory Mandate to Evaluate the Economic and Environmental Impacts of Proposed Projects.**

93. Plaintiffs incorporate the preceding paragraphs by reference.

94. FERC has a statutory mandate to ensure that a project satisfies the public necessity and convenience, an analysis which includes among other things, an evaluation of the proposed project's economic and environmental impacts as well as other factors that have bearing on the public interest. *See* 15 U.S.C. §717f(a) (projects must be in the public interest).

95. By definition, however, whenever FERC grants a "blanket" certificate that authorizes construction outside a project footprint FERC has expressly evaluated and approved, FERC is authorizing the applicant to undertake a project that FERC has not determined is in the public convenience and necessity and that FERC has not evaluated for economic and environmental impact.

96. Plaintiffs therefore seek a declaration that FERC's practice of granting "blanket" certificates—at least those that authorize construction outside evaluated and approved project footprints—violates FERC's statutory mandate to determine the public convenience and necessity including the economic and environmental impacts of proposed pipeline projects.

**COUNT 8: Declaratory Judgment That FERC's Practice of Granting "Blanket Certificates" Violates the Natural Gas Act's Requirements of Notice and Hearing on Expansions Not Contemplated in Initial Applications.**

97. Plaintiffs incorporate the preceding paragraphs by reference.

98. 15 U.S.C. §717f(a) requires "necessary" expansions and improvements ordered under the Act to be issued "after notice and opportunity for hearing" to all interested persons.

99. Further, 15 U.S.C. §717f(c) requires a certificate of convenience and necessity for all acts and operations, including the construction and operation of any facilities or extensions thereof: "No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations."

100. Acts and operations, including the construction and operations of any facilities or extensions thereof, authorized under the Act are subject



to the notice and hearing requirements of 15 U.S.C. §717f(c), except that the Commission may issue temporary certificates in cases of emergency.

101. Plaintiffs seek a declaration FERC's practice granting "blanket certificates" violates the Act's requirements of notice and hearing on expansions not contemplated in initial applications.

**COUNT 9: Declaratory Judgment That FERC's Granting of "Blanket Certificates" Violates Plaintiffs' Procedural-Due-Process Rights Under the Fifth Amendment.**

102. Plaintiffs incorporate the preceding paragraphs by reference.

103. Plaintiffs seek a declaratory judgment that FERC's practice granting "blanket certificates"—which enables the blanket certificate holder to exercise eminent domain for property interests not specified in a certificate application—violates the procedural-due-process rights of Plaintiffs and other interested parties under the Due Process Clause of the Fifth Amendment.

**COUNT 10: Declaratory Judgment That the Grant of Blanket Certificates, by Which the Certificate Holder May Exercise Eminent Domain, Violates Constitutional Separation-of-Powers Doctrines, Including the Private Nondelegation Doctrine.**

104. Plaintiffs incorporate the preceding paragraphs by reference.

105. By statute, a natural-gas company may not condemn property that is not specifically described in its existing FERC certificate, even if the

natural-gas company seeks to acquire such property in order to operate and maintain an existing pipeline facility.

106. “A distinction exists” between statutes that “authorize officials to exercise the sovereign’s power of eminent domain on behalf of the sovereign itself” and “statutes which grant to others, such as public utilities, a right to exercise the power of eminent domain on behalf of themselves.” *United States v. Carmack*, 329 U.S. 230, 243 n.13 (1946). Section 7(h) of the NGA is, by its nature, a “grant[] of limited powers.” *Id.*

107. Plaintiffs seek a declaration that the certificate’s “blanket authorization,” coupled with Section 7(h)’s limited conferral of eminent-domain authority, grants to a blanket certificate holder precisely the type of “unrestrained ability to decide” to take another citizen’s property that the private nondelegation doctrine and other separation-of-powers doctrines forbid and that such blanket certificates therefore violate the U.S. Constitution.

**COUNT 11: Declaratory Judgment That FERC’s Granting of Certificates to Private, Nongovernmental Entities Without Ensuring the Entities Have Adequate Assets Sufficient to Guarantee Payment of Just Compensation Violates the NGA.**

108. Plaintiffs incorporate the preceding paragraphs by reference.

109. The Takings Clause of the Fifth Amendment requires the payment of “just compensation” when private property is taken for public

use. Any act granting condemnation power must provide for compensation with absolute certainty.

110. “The owner is entitled to reasonable, certain, and adequate provision before his occupancy is disturbed.” *Sweet v. Rechel*, 159 U.S. 380, 403 (1895). Proving “adequate provision” of just compensation requires showing that “the means for securing indemnity [are] such that the owner will be put to no risk or unreasonable delay.” *Id.* at 401. And a statute that “attempts to authorize the appropriation of public property for public uses, without making adequate provision for compensation, is unconstitutional and void and does not justify an entry on the land of the owner without his consent.” *Id.* at 402.

111. Unlike government condemnors, which may rely on the full faith and credit of the public fisc, private companies seeking the power of eminent domain (including applicants for FERC certificates) must do much more than just promise to pay the full measure of just compensation that the Constitution guarantees to property owners.

112. To satisfy the Just Compensation Clause, the private, nongovernmental condemnor must (1) have the ability to be sued and (2) own such substantial assets that just compensation is, to a virtual certainty, guaranteed by payment from an adequate fund.

113. FERC does not make such inquiries before granting certificates, which open the door to the exercise of eminent domain.

114. MVP is a Delaware limited-liability company and is a special-purpose, joint-venture entity set up in 2015 for the sole purpose of creating the MVP Project. MVP does not currently own or operate any interstate pipeline facilities and currently has no existing customers. MVP's owner-operator has already admitted in an SEC filing that MVP "has insufficient equity to finance its activities during the construction stage of the project."

115. Like MVP, ACP is a fledgling joint-venture LLC set up specifically for a single pipeline project. According to a 2016 SEC filing by ACP's 40% owner (Duke Energy), ACP has "insufficient equity to finance [its] own activities without subordinated financial support." Even so, as indicated in its filing, Duke "does not have . . . the obligation to absorb losses" of ACP. ACP's other principal owner—Dominion, which owns a 45% membership interest in ACP—likewise concluded in a 2016 SEC filing that ACP "has insufficient equity to finance its activities without additional subordinated financial support." And, like Duke, Dominion has not made any financial guarantees to ensure payment of just compensation: "Dominion's maximum exposure to loss is limited to its current and future investment."

116. As private, for-profit companies, MVP and ACP could go bust or otherwise become unable to pay just-compensation awards.

117. Accordingly, to avoid constitutional problems under the Takings Clause, Plaintiffs seek a declaratory judgment that a “holder of a certificate of public convenience and necessity” under the eminent-domain provisions of 15 U.S.C. §717f(h) refers to an entity that has demonstrated in its FERC application that it (1) has the ability to be sued and (2) owns such substantial assets that just compensation is, to a virtual certainty, guaranteed by payment from an adequate fund.

**COUNT 12: Declaratory Judgment That FERC’s Granting of Certificates to Private, Nongovernmental Entities Without Ensuring the Entities Have Adequate Assets Sufficient to Guarantee Payment of Just Compensation Violates the Fifth Amendment’s Takings Clause.**

118. Plaintiffs incorporate the above paragraphs by reference.

119. If the Court does not grant the declaratory judgment sought in Count 11, Plaintiffs seek a declaratory judgment that 15 U.S.C. §717f(h) is unconstitutional as applied to Plaintiffs, since neither FERC, nor MVP, nor ACP has shown that the certificate holders both (1) have the ability to be sued and (2) own such substantial assets that just compensation is, to a virtual certainty, guaranteed by payment to Plaintiffs from an adequate fund.

**COUNT 13: Declaratory Judgment That 15 U.S.C. §717f Does Not Allow for “Quick-Take” Condemnations.**

120. Plaintiffs incorporate the preceding paragraphs by reference.

121. 15 U.S.C. §717f(h) provides: “When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts.”

122. The NGA does not provide for quick-takes—i.e., allowing a condemnor to take the property at issue before the amount of just compensation is finally decided.

123. Congress has authorized quick-takes by the federal government and for certain other entities in particular situations (*see, e.g.*, 40 U.S.C. §3114), but has not done so under the NGA.

124. Even so, certificate holders have frequently—and oftentimes successfully—invoked FERC certificates as a ground for courts to authorize “quick-take” (rather than “straight”) condemnations.

125. FERC cannot grant any greater power to certificate holders than what Congress has authorized under the NGA.

126. Congress is the sole keeper of the U.S. government’s sovereign power of eminent domain, and neither FERC nor the judiciary have power to expand the use of that power by natural-gas companies beyond the grant of eminent-domain authority that Congress conferred under the NGA.

127. Accordingly, Plaintiffs seek a declaratory judgment that 15 U.S.C. §717f does not authorize quick-take condemnations.

**COUNT 14: Declaratory Judgment That FERC Certificates That Allow “Quick-Take” Condemnations Are Unconstitutional.**

128. Plaintiffs incorporate the preceding paragraphs by reference.

129. If FERC certificates allowing quick-take condemnations do not violate the NGA itself, then such certificates are unconstitutional grants of eminent-domain power that encroach on Congress’s legislative power, violating constitutional separation-of-powers principles such as the Vesting Clause of Article I, section 1 of the Constitution.

130. Further, to the extent the judiciary reads such FERC certificates as supporting or allowing quick-take condemnations and issues

orders allowing quick-takes, the judiciary encroaches on Congress's power to define the scope of the eminent-domain authority conferred on natural-gas companies.

131. Plaintiffs seek a declaration that FERC certificates allowing “quick-take” condemnations—or judicial orders blessing quick-take condemnations under the NGA—violate separation-of-powers doctrines and are therefore unconstitutional.

**COUNT 15: Declaratory Judgment That FERC's Refusal to Afford Impacted Landowners Access to Confidential and Privileged Filings by the Applicant To Allow Them To Challenge Public Need Violates Landowners' Due-Process Rights.**

132. Plaintiffs incorporate the preceding paragraphs by reference.

133. CCN applicants routinely file confidential and privileged information in support of their application that is also relevant to the project's public use and necessity. Without this information, landowners are unable to effectively challenge the public use or need for the project.

134. The Plaintiffs have requested from FERC certain critical documents filed by MVP and ACP, which MVP and ACP contend are confidential and privileged. These critical documents have not been disclosed.

135. Plaintiffs seek a declaration that FERC's reliance on such allegedly confidential and privileged information withheld from impacted



landowners violates their due-process rights by depriving them of a meaningful opportunity to challenge project use and rebut the Commission's findings of public need.

**COUNT 16: Declaratory Judgment That FERC's Refusal to Consider Constitutional Questions Violates Landowners' Fifth Amendment Due-Process Rights.**

136. Plaintiffs incorporate the preceding paragraphs by reference.

137. Section 7r of the Natural Gas Act provides a mechanism for parties to a FERC proceeding to seek rehearing and subsequently judicial review of an adverse FERC ruling.

138. Section 7r governs review of only FERC orders. Critically, FERC contends that review under Section 7r does not extend to determinations of the constitutionality of the Natural Gas Act and the exercise of eminent domain thereunder. FERC claims that such matters are outside the scope of its jurisdiction. *See* MVP Order at 61, ACP Order at 81.

139. As a result, landowners cannot raise constitutional challenges to proposed pipeline projects in FERC. Rather, they have to wait until after FERC has issued a certificate and denied rehearing before they can raise those challenges in the first instance in federal appellate courts.

140. By that point, though, the damage is done, as certificated pipeline companies have often long since taken property and commenced construction, irreversibly altering the landowners' property.

141. Plaintiffs seek a declaration that, by denying landowners any opportunity to raise constitutional challenges until after their property is already taken and irreversibly altered, FERC denies those landowners the due process of law required by the Fifth Amendment.

**COUNT 17: Declaratory Judgment That Prohibiting  
Non-Intervening Landowners from Challenging FERC  
Orders Violates Those Landowners' Due-Process Rights.**

142. Plaintiffs incorporate the preceding paragraphs by reference.

143. The remedies in NGA section 7r are unavailable to impacted landowners who did not intervene in the FERC process but who nevertheless stand to be deprived of their property rights without fair notice. *See* 15 U.S.C. §717f(r)

144. Neither section 7r nor FERC policies require landowners to intervene to participate in the certificate program before FERC. And the notice provided to landowners by FERC, MVP, and ACP did not warn landowners that failure to intervene might result in a waiver of their right to mount statutory, constitutional, and other legal challenges to the taking of their property.

145. At least nine of the landowner Plaintiffs in this proceeding did not intervene in the FERC process, yet, without fair notice, stand to lose property rights by eminent domain. Confining these landowners to the remedies under section 717r, which are now unavailable to them, would

deprive them of due process in the taking of their property, as they would be unable to raise certain statutory, constitutional, and other legal challenges related to the takings.

146. Plaintiffs therefore seek a declaratory judgment that requiring resolution of constitutional questions through FERC under the terms of the Natural Gas Act violates landowners' Fifth Amendment due-process rights.

### **PRAYER FOR RELIEF**

147. Plaintiffs incorporate all of the paragraphs set forth above and respectfully pray for the following relief:

- A. the declaratory relief requested above;
- B. an injunction preventing MVP and ACP from proceeding with development of their respective projects or moving forward with eminent-domain actions under their constitutionally and statutorily deficient certificates;
- C. an injunction preventing MVP and ACP from exercising eminent-domain power under a certificate of convenience and necessity that is conditioned on the receipt of federal or state authorizations;
- D. in the alternative, an invalidation of the blanket authority granted to ACP or MVP under their respective blanket certificates in excess of demonstrated and certificated need;

F. in the alternative, an order granting Plaintiffs discovery on MVP's and ACP's plans to transport gas for export and other issues relevant to Plaintiffs' claims;

G. attorneys' fees, other costs and such other relief as the Court deems appropriate and just.

Respectfully submitted,

*Carolyn Elefant*

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No. 18-2185

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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BOLD ALLIANCE, BOLD EDUCATIONAL FUND, NANCY KASSAM-ADAMS,  
SHAHIR KASSAM-ADAMS, PETER A. AGELASTO III (INDIVIDUALLY AND AS  
CHAIRMAN OF ROCKFISH VALLEY FOUNDATION), JUDITH ALLEN, ELEANOR  
M. AMIDON, DAWN AVERITT, JILL AVERITT, RICHARD AVERITT, RICHARD G.  
AVERITT, DR. SANDRA SMITH AVERITT, JAMES R. BOLTON, CONSTANCE  
BRENNAN, JOYCE D. BURTON, CAROLYN L. FISCHER, BRIDGET K. HAMRE,  
CHARLES R. HICKOX, DEMIAN K. JACKSON, JANICE JACKSON, LISA Y.  
LEFFERTS, WILLIAM LIMPERT, DAVID DRAKE MAKEL, CAROLYN JANE MAKI,  
ELIZABETH NEELY, WADE NEELY, NELSON COUNTY CREEKSIDE, LLC, LOUIS  
RAVINA, ROCKFISH VALLEY FOUNDATION, ROCKFISH VALLEY  
INVESTMENTS, VICTORIA C. SABIN, ALICE ROWE SCRUBY, TIMOTHY MARK  
SCRUBY, MARILYN M. SHIFFLETT, SHARON SUMMERS, CAPIN WILSON, JR.,  
WINTERGREEN COUNTY STORE LAND TRUST, AND KENNETH M. WYNER,  
*Petitioners,*

v.

FEDERAL ENERGY REGULATORY COMMISSION,  
*Respondent.*

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MOTION FOR LEAVE TO INTERVENE

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### **RULE 26.1 DISCLOSURE STATEMENT**

The Niskanen Center is a 501(c)(3) think tank and advocacy organization; it has no parent company, and no publicly-held company has a 10% or greater ownership interest in it.

### **STATEMENT OF CONSENT TO MOTION**

In accordance with Local Rule 27(a), the undersigned counsel states that the other parties to the Petition for Review have been informed of the intended filing of this Motion to Intervene. Petitioners consent to the granting of this motion. Respondent Federal Energy Regulatory Commission (“FERC”) does not consent to the filing of this Motion but has stated that it does not intend to file a response in opposition.

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Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, Lora Baum and Victor Baum move for leave to intervene in this challenge to the Federal Energy Regulatory Commission's Order Issuing Certificates in *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042 (October 13, 2017) (the "Certificate Order"), and the Commission's Order on Rehearing in *Atlantic Coast Pipeline, LLC*, 164 FERC ¶ 61,100 (August 10, 2018). Under Rule 15(d), this motion is timely filed within 30 days of the petition for review, which was filed on October 9, 2018.

### Introduction

Victor and Lora Baum are Virginian landowners who will be irreparably injured by the construction of the Atlantic Coast Pipeline ("ACP"), which will not only be built through their land in Bath County, Virginia, but will come within 100 yards of their house, putting them squarely within the "immolation zone" should an accident occur. *Exhibit 1*, Declaration of Victor C. Baum ("V. Baum Decl.") ¶ 38; *Exhibit 2*, Declaration of Lora Baum ("L. Baum Decl.") ¶ 37. The building of the pipeline through Mr. and Mrs. Baum's land effectively destroys the very reason they purchased the land in the first place, the view and the serenity of the property's surroundings. *Ex. 1*, ¶¶ 5, 35; *Ex. 2*, ¶ 5, 34.

What makes this intervention unusual is that the Baums were not parties to FERC's administrative process and thus could not seek rehearing of FERC's Certificate Order; such a request for rehearing is ordinarily required by the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(a), as a jurisdictional prerequisite to judicial review of a Certificate Order. However, in *Ala. Mun. Distrib. Group v. FERC*, 300 F.3d 877 (D.C. Cir. 2002), the Court held that intervenors need only meet the requirements of Rule 15(d) and demonstrate Article III standing; they do not need to have satisfied the NGA's jurisdictional requirements: "For petitions arising under the Natural Gas Act, intervention in this court is governed by Federal Rule of Appellate Procedure 15(d), and that rule

does not hold a would-be intervenor to the same statutory requirements as a party filing a petition for review.”

Because FERC argued in *Ala. Mun. Distrib. Group v. FERC* that intervenors *did* have to satisfy the NGA’s jurisdictional prerequisites (*id.* at 879) and because this Court has not yet addressed this issue, as discussed below, movants nevertheless satisfy the NGA’s exception to these jurisdictional requirements. The NGA provides that failure to seek rehearing is *not* a bar to that party seeking judicial review when “there is reasonable ground for failure so to do.” 15 U.S.C. § 717r(b).

Such “reasonable ground” exists here, because FERC did not provide the Baums with sufficient notice, as required by the Due Process Clause, that they had to intervene in FERC’s administrative process in order to preserve their rights to judicial review of FERC’s eventual decision.

FERC violated the Baums’ due process rights to adequate notice and the opportunity to have an Article III court review the government’s decision to take their property, a violation that clearly satisfies the “reasonable ground” criterion of § 717r(b). Intervention is, by definition, the only adequate remedy for this due process violation; if the Baums are not permitted to intervene, FERC’s failure to provide adequate notice will have deprived them of all meaningful judicial review of the taking of their property.<sup>1</sup>

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<sup>1</sup> The Baums are also among the plaintiffs in a separate judicial proceeding involving ACP, *Bold Alliance v. Federal Energy Regulatory Commission*, No. 1:17-cv-01822-RJL, U.S. District Court for the District of Columbia, September 5, 2017. There, the Baums seek a declaratory judgment that barring non-intervening landowners from obtaining judicial review of FERC Certificate Orders violates their due process rights. Without addressing these due process claims, the District Court dismissed the complaint, and an appeal was docketed in the United States Court of Appeals for District of Columbia Circuit on October 31, 2018, Case No. 18-5322.

## **I. THE BAUMS HAVE ARTICLE III STANDING.**

An intervenor must satisfy the requirements of Article III standing to be granted intervention. *Ala. Mun. Distribs. Group*, 300 F.3d at 879 (D.C. Cir. 2002). The three "irreducible minimum requirements" of Article III standing are: "(1) an injury in fact (i.e., a concrete and particularized invasion of a legally protected interest); (2) causation (i.e., a fairly . . . trace[able] connection between the alleged injury in fact and the alleged conduct of the defendant); and (3) redressability (i.e., it is likely and not merely speculative that the plaintiff's injury will be remedied by the relief plaintiff seeks in bringing suit)." *Neil v. Wells Fargo Bank, N.A.*, 686 Fed. Appx. 213, 219 (4<sup>th</sup> Cir. 2017).

Mr. and Mrs. Baum's Article III standing is self-evident. The Baums will suffer a concrete injury in fact because they face the permanent taking of their property by ACP. This injury is traceable to FERC's Certificate Order, which granted a Certificate of Public Convenience and Necessity to ACP, and the Natural Gas Act, 15 USC § 717f(h), provides that Certificate holders may exercise eminent domain. ACP can now initiate condemnation proceedings, and a condemnation action against the Baums' property is imminent. The Baums have received multiple letters from ACP attempting to obtain an easement on their land (*Exs. 1 & 2*, ¶ 27) and ACP has already filed condemnation proceedings in Virginia against landowners who have refused to grant easements for the pipeline.<sup>2</sup> Finally, this injury is redressable by a favorable decision of this Court vacating or modifying the Certificate.

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<sup>2</sup> See, e.g., *Atlantic Coast Pipeline Sues for Eminent Domain in Virginia*, Associated Press, February 13, 2018 (noting that ACP "has filed lawsuits against around 100 landowners along the pipeline's route.").

**II. THE BAUMS HAD REASONABLE GROUNDS FOR NOT SEEKING REHEARING BECAUSE THEY DID NOT RECEIVE CONSTITUTIONALLY-SUFFICIENT NOTICE THAT THEY WERE REQUIRED TO INTERVENE IN FERC’S ADMINISTRATIVE PROCESS IN ORDER TO PRESERVE THEIR RIGHT TO JUDICIAL REVIEW OF FERC’S CERTIFICATE DECISION.**

Mr. and Mrs. Baum did not seek rehearing of FERC’s Certificate Decision because they were not parties to FERC’s administrative process, and they were not parties to FERC’s administrative process because FERC failed to give them sufficient notice that becoming parties via intervention was required in order to eventually seek judicial review of FERC’s decision.

A. The Information the Baums Received.

FERC’s regulations (18 CFR 157.6(d)(3)) require pipeline companies to notify “affected landowners”, which includes landowners whose property is “crossed or used” by the pipeline (18 C.F.R. 157.6(d)(2)(i)) with relevant information about the Certificate process.

By letter dated March 23, 2016 (the “March 23 Notice Letter”) ACP informed the Baums that “[i]f the preferred [pipeline] route is approved, the ACP could affect land you own or rent.” *Exs. 1 & 2*, ¶ 15. The March 23 Notice Letter enclosed some 40 plus pages of additional documentation. *Exs. 1 & 2*, ¶ 19. Neither the March 23 Notice Letter itself, nor any of its enclosures, provided the Baums with adequate notice that they had to intervene in the FERC administrative process in order to preserve their rights to judicial review of FERC’s eventual decision. *See Exs. 1 & 2*, ¶ 21.

The March 23 Notice Letter itself was entirely silent on the issue of intervention in FERC’s administrative process. *See Exs. 1 & 2*, ¶ 15. The enclosures were, astonishingly, even less helpful than ACP’s complete silence. *See Exs. 1 & 2*, ¶¶ 17, 19.

One enclosure was FERC’s October 2, 2015 Notice of Application (“NOA”) for the ACP project. *Exhibit 3*, October 2, 2015 NOA. The 3-page, single-spaced NOA contained a single sentence concerning rights to judicial review: “Only parties to the proceeding can ask for court

review of Commission orders in the proceeding.” *Ex. 3* at 3; *Exs. 1 & 2*, ¶ 16. Elsewhere in the NOA, FERC provided this information about how a landowner could become a “party to the proceeding”:

[A]ny person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission’s Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10).

*Ex. 3* at 2.

Few laypeople know what “18 CFR 385.214 or 385.211” or “18 CFR 157.10” are or what they mean. Reading these provisions makes it clear that FERC has designed them, as it has all of its notice requirements, to confuse and discourage landowners from seeking intervention. 18 CFR 385.211, which allows for “protests” in order to object “to any application, complaint, petition, [etc.]” is a perfect example of FERC’s strategy, since it provides that “(2) The filing of a protest does not make the protestant a party to the proceeding.” In other words, in the same sentence that FERC tells landowners that they have to file a motion to intervene in order to become a “party to the proceeding”, FERC then directs them to a regulation governing a procedure that expressly does *not* make them a “party to the proceeding”.

Things get a little better when a landowner turns to 18 CFR 385.214, which is titled “Intervention”. Subsection (b) (“Contents of motion”) provides as follows:

(1) Any motion to intervene must state, to the extent known, the position taken by the movant and the basis in fact and law for that position.

(2) A motion to intervene must also state the movant's interest in sufficient factual detail to demonstrate that:

(i) The movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

- (A) Consumer,
- (B) Customer,
- (C) Competitor, or

- (D) Security holder of a party; or
- (iii) The movant's participation is in the public interest.

This regulation requires that a movant “*must*” demonstrate either that he “has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action” (subsection (b)(2)(i)); that he “has or represents an interest which may be directly affected by the outcome of the proceeding” (subsection (b)(2)(ii)); or that his participation is “in the public interest” (subsection (b)(2)(iii)).

There is nothing in any of the documentation provided to the Baums that indicates in any way that they “have a right to participate which is expressly conferred by statute or by Commission rule, order, or other action.” And while landowners certainly have “an interest which may be directly affected by the outcome of the proceeding”, no landowner looking at this regulation would think so, since FERC has deliberately omitted landowners from the list of interests which FERC says are “directly affected” by FERC’s proceeding. This leaves a landowner to ponder whether his “participation is in the public interest”, and it is certainly questionable whether an individual landowner would ever think that his participation for the purpose of trying to stop a pipeline company from taking his land is “in the public interest”. In other words, FERC designed this regulation so that a landowner reading it would have little or no reason to believe that he has any right to intervene.

Finally, a landowner might turn to the third provision FERC lists in the NOA, 18 CFR 157.10. Subsection (a) (“Notices of Application”), informs the reader that each pipeline notice of application “will fix the time within which any person desiring to participate in the proceeding may file a petition to intervene.” This is especially relevant to the Baums, because the NOA they received helpfully stated that *the deadline for motions to intervene was October 23, 2015, which*

*was more than 5 months before the date of the March 23, 2016 Notice Letter. Ex. 3, at 1 & 3; Exs. 1 & 2, ¶ 17.*

It is hard to imagine a document better designed to confuse and discourage landowners from intervening in the administrative process than FERC’s NOA; it is equally hard to imagine that this is unintentional.

A second enclosure to the March 23 letter was a FERC brochure entitled ‘*An Interstate Natural Gas Facility on My Land? What do I Need to Know?*’<sup>3</sup> In this entire 32-page document, only a single sentence describes how landowners who intervene can preserve their right to appeal FERC’s Certificate decision: “You will also be able to file briefs, appear at hearings and be heard by the courts if you choose to appeal the Commission’s final ruling.” *Id.* at p. 8. Remarkably, this single sentence did not inform landowners that they *had* to intervene in order to preserve their rights to judicial review of FERC’s decision allowing a pipeline company to take their property.

Further, as the Baums point out, “The brochure also noted that you ‘normally’ have to file an intervention within 21 days of FERC’s notice of application in the federal register, but again, we received all of this information **5 months after** the notice of application was published. None of this made any kind of sense.” *Exs. 1 & 2, ¶ 19.* Indeed.

A third enclosure to the March 23 letter was 4-page, single-spaced ACP publication titled “Landowner Rights.” There is only a single, passive reference to intervention in the entire document, noting under a section titled ‘Landowner Rights in the FERC Review Process’ the right to have “the Commission’s decision reviewed in federal court (must be an intervenor to do this.)” *Id.*, ¶ 20. Given FERC’s policy of making the intervention process as obscure as possible, it is not

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<sup>3</sup> *Available at:* <https://www.ferc.gov/resources/guides/gas/gas.pdf>; last visited November 2, 2018.



surprising that the pipeline company's notice about the need to intervene as a prerequisite to judicial review is a 7-word parenthetical in a 4-page, single-spaced document.

If all this were not enough to stop landowners from trying to intervene, FERC capped it off with inconsistent and contradictory instructions on the mechanics of intervention. As Mr. Baum points out, FERC's brochure "stated that you have to file 14 paper copies with the Commission or file electronically, while the Notice of Application stated that you had to file 7 paper copies with the Commission and serve all of the parties." *Id.*, ¶ 19.

As if all of this were not confusing enough, by letter dated March 25, 2016, ACP informed the Baums that ACP had filed an Amendment to its Application. *Id.*, ¶ 23. This letter enclosed a copy of an Amended Notice of Application, which now provided that the deadline for motions to intervene was April 12, 2016. *Exhibit 4*, FERC March 22, 2016 NOA; *Ex. 2*, ¶ 25. Since March 25, 2016, was a Friday, the Baums would have received this no earlier than March 28, giving them at most just 15 days to move to intervene in FERC's administrative process. *Id.*, ¶ 26. By this time, the Baums were thoroughly confused, and "neither my wife nor I knew or understood that we *had* to intervene in the FERC proceedings to preserve our rights to challenge FERC's decision in Court." *Id.*

B. The Information the Baums Received Did Not Provide Sufficient Notice that They Were Required to Intervene in FERC's Administrative Process in Order to Preserve Their Right to Judicial Review of FERC's Certificate Decision.

To date, ACP has sent well over 200 pages of correspondence and materials to Mr. and Mrs. Baum. *Id.*, ¶ 27. None of these communications adequately notified Mr. and Mrs. Baum that if they did not intervene in the FERC action, they would not be able to seek judicial review of FERC's decision. *Ex. 1*, ¶ 31; *Ex. 2*, ¶ 30. It was never clearly communicated to Mr. and Mrs. Baum where, how, or why they could or should intervene. *Ex. 1*, ¶¶ 30, 32; *Ex. 2*, ¶ 29, 31. As they understood it,

so long as they submitted some comments to the FERC proceeding, their rights would be preserved:

Based on the correspondence received, my wife and I drew the logical conclusion that our rights would be preserved and upheld if we filed comments in the FERC proceedings and attended meetings. Nowhere did ACP state that if we did not intervene in the proceedings (and based on the correspondence ACP sent us, the time had clearly passed anyway), that we would be waiving our rights to have *any* authoritative body review FERC's decision to allow a private entity such as ACP take our land. *Ex. 1 & 2, ¶ 21.*

Nor, it should be emphasized, were the Baums passively sleeping on their rights. The Baums submitted no fewer than five sets of comments to FERC concerning the ACP and its effect on their lives and on Virginia, including comments submitted even before they knew with certainty that their land was targeted for appropriation. *Ex. 1, ¶¶ 13, 28, 29; Ex. 2, ¶¶ 13, 28; Exhibit 5, Victor Baum's March 12, 2016 FERC Comment; Exhibit 6, Victor Baum's July 19, 2016 FERC Comment; Exhibit 7, Victor Baum's February 12, 2017 FERC Comment; Exhibit 8, Lora Baum's March 21, 2016 FERC Comment; Exhibit 9, Lora Baum's March 26, 2018 FERC Comment.*

In one comment, Mr. Baum discussed how the ACP's claims that real estate value would remain unaffected by the pipeline was ridiculous, noting that: "Even several people working for ACP have commented on the beauty of the view when they have come by, apparently oblivious to the fact they are among the very people working to destroy it. [...] Our house will be within 100 yards of the pipeline, well within the immolation zone in case of an accident. [...] I sincerely doubt we could even give [the house] away." *Ex. 7; See Ex. 1, ¶ 29.* Ms. Baum signed, along with 14 other people, a FERC comment in opposition to the pipeline through Virginia, which noted environmental impacts, increased dependence on fossil fuels, recreation impacts, public safety, and property rights. *Ex. 8; See Ex. 2, ¶ 13.* Mr. Baum disputed ACP's claim that there will be no visual impact at Little Valley Run, as ACP had proposed "to carve off and denude the length of a mountain ridge and destroy, in perpetuity, acres of forest as well as placing as yet undefined mile of

access roads to scar the landscape.” *Ex. 6; Ex. 1*, ¶ 28; and Mrs. Baum asked that FERC not grant ACP’s request to cut down trees outside of the designated time period. *Ex. 9; Ex. 2*, ¶ 28.

If FERC or ACP had adequately informed the Baums that, in addition to submitting comments, they had to intervene in the agency’s administrative process in order to preserve their rights to judicial review, “[they] absolutely would have intervened in the FERC proceeding.” *Ex. 1*, ¶ 33; *Ex. 2*, ¶ 32.

The Fifth Amendment provides that “no person shall be ... deprived of life, liberty, or property, without due process of law”, and FERC’s failure to adequately give notice to Mr. and Mrs. Baum of what they had to do in order to preserve their right to judicial review of an agency action that could (and has) made their land subject to eminent domain violates the Due Process Clause.

In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the Supreme Court set forth three factors to be considered in determining whether a government procedure satisfies due process:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

As to the first factor, it is indisputable that the Baum’s home and property are a private interest of the first magnitude. “Good’s right to maintain control over his home, and to be free from governmental interference, is a private interest of historic and continuing importance.” *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993).

Both prongs of the second factor also weigh in the Baums’ favor. The risk of an erroneous deprivation of property is, by definition, significant if there is no judicial review of an agency’s decision seize someone’s property, and “[A]s to the risk of erroneous deprivation, many courts have acknowledged that that risk significantly increases as the notice becomes less detailed and

more vague.” *Ass’n of Community Organizations for Reform Now (ACORN) v. FEMA*, 463 F.

Supp. 2d 26, 34 (D.D.C. 2006). In addition, the value of the additional information clearly

informing landowners that they must intervene (and how to do so) would ensure that any decision

not to intervene would be an intelligent and informed one.

Finally, the “fiscal and administrative burdens” of providing such clear notice to landowners are close to zero. That notice need be no more than a few simple, declarative sentences to be included either in FERC’s Notice of Application or its informational brochure, or FERC could require Certificate applicants to include it in their initial notice letters to landowners. Nothing could be easier than to include language along these lines:

**If the Commission grants the requested Certificate of Convenience and Public Necessity for the applicant’s proposed pipeline, then the applicant will have the right, subject to paying just compensation, to take your property for its pipeline project.**

**The only way you can have a court review the Commission’s decision to grant the Certificate is by intervening now as a party in this proceeding. If you do not intervene now, you will not be able later to ask a court to review the Commission’s decision.**

**Landowners can intervene by simply stating that the applicant has said that it may take your land for the pipeline project and that you would like to become a party to this proceeding. You can do so electronically or by mail to the following address . . .**

The Supreme Court has specifically addressed the issue of what form of notice satisfies the Due Process Clause. The seminal case governing this issue is *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950). The issue in *Mullane* was whether newspaper publication notice sufficed to inform trust beneficiaries of a judicial settlement of the accounting for their accounts. The Court held that it was not:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, *under all the circumstances*, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.*

*Id.* at 314 (emphasis added). Citing its 1914 ruling in *Grannis v. Ordean*, 234 U.S. 385, 394, which held that “The fundamental requisite of due process of law is the opportunity to be heard”, the *Mullane* Court observed that, “This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.” *Id.* at 314. See also *Snider Int’l Corp. v. Town of Forest Heights*, 739 F.3d 140, 146 (4<sup>th</sup> Cir. 2014) (finding that proper notice, in particular, is an “elementary and fundamental requirement of due process,” and must be reasonably calculated to convey information concerning a deprivation.”); *United States v. Minor*, 228 F.3d 352, 356-357 (4<sup>th</sup> Cir. 2000) (recognizing adequacy of notice as “a matter of obvious constitutional magnitude” and notice is adequate if it is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action”).)

It is difficult to see how the information FERC provided to Mr. and Mrs. Baum informed them of their choice to intervene or allowed them to act on it; it certainly cannot be said, as *Mullane* requires, to either “reasonably to convey the required information” or “afford a reasonable time for those interested to make their appearance.” The NOA is a perfect example of what *Mullane* referred to as “mere gesture”: “[W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of *actually informing* the absentee might reasonably adopt to accomplish it.” *Mullane*, 339 U.S. at 315 (emphasis added).

In *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978), the Supreme Court dealt with the specific issue of the Due Process requirements concerning what notice must be provided about the recipient’s means of appealing adverse decisions, precisely the issue with FERC’s notice procedure. In *Memphis*, a municipal utility customer received a “final notice” which “simply stated that payment was overdue and that service would be discontinued if payment was not made by a certain date.” *Id.* at 13. However, the notice said nothing about the utility’s procedures for

appealing the utility's termination decision, and thus the question was "whether due process requires that a municipal utility notify the customer of the availability of an avenue of redress within the organization should he wish to contest a particular charge" prior to termination of service." *Id.* Citing *Mullane*, the Court held that, "Petitioners' notification procedure, while adequate to apprise the Crafts of the threat of termination of service, was not 'reasonably calculated' to inform them of the availability of "an opportunity to present their objections" to their bills." *Id.* at 14.

FERC's failure to adequately inform affected Mr. and Mrs. Baum of the sole means by which they could challenge the Certificate Order (and what they must do in order to preserve that right) is no less deficient under the than the lack of notice of the process by which the notice recipient could challenge the adverse determination at issue in *Memphis Light*.

FERC's notice practices are also similar to the ones held to violate the Due Process Clause in *Ass'n of Community Organizations for Reform Now(ACORN) v. FEMA*, 463 F. Supp. 2d 26 (D.D.C. 2006). At issue in *ACORN* was whether FEMA's notices of termination of benefits provided sufficient information to enable recipients "to file a meaningful appeal". *Id.* at 28. And while *ACORN* found that "the letters sent by FEMA do not provide adequate explanation of FEMA's decisions" (*id.* at 35), and thus deprived the plaintiffs of the ability to effectively appeal FEMA's decisions, the due process violation here is even worse, since FERC's notice bars landowners from making any appeal whatsoever.

### CONCLUSION

For the foregoing reasons, this Court should grant the Motion to Intervene.

Respectfully submitted,

/s/ Megan C. Gibson  
Megan C. Gibson  
David Bookbinder  
Niskanen Center  
820 First Street, NE  
Suite 675  
Washington, DC 20002  
(202) 899-1172  
dbookbinder@niskanencenter.org  
mgibson@niskanencenter.org

DATED: November 8, 2018

### **CERTIFICATE OF SERVICE**

In accordance with Federal Rule of Appellate Procedure 15(d), the undersigned certifies that on November 8, 2018, a copy of this Motion for Leave to Intervene was served on all parties of record via the Court's EM/ECF system.

Respectfully submitted,

/s/ Megan C. Gibson  
Megan C. Gibson  
David Bookbinder  
Niskanen Center  
820 First Street, NE  
Suite 675  
Washington, DC 20002  
(202) 899-1172  
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[dbookbinder@niskanencenter.org](mailto:dbookbinder@niskanencenter.org)

# EXHIBIT 1



THE UNITED STATES COURT OF APPEALS  
 FOR THE FOURTH CIRCUIT

**BOLD ALLIANCE et al.,**

*Petitioners,*

v.

**FEDERAL ENERGY REGULATORY  
 COMMISSION,**

*Respondent.*

Case No. 18-2185

DECLARATION OF VICTOR C. BAUM

I, Victor Baum, state and affirm as follows:

1. I am competent to give this declaration, and all information herein is based on my own personal knowledge, unless otherwise indicated.

2. I am seventy years old.

**(A) Our Property**

3. Atlantic Coastal Pipeline (“ACP”) seeks to take land that my wife and I co-own in Bath County, Virginia. *See Exhibit 1A*, ACP’s pipeline planned route through our property.<sup>1</sup>

4. The land at issue is located at 368 Fern Gully Lane, Warm Springs, VA 24484; Tax Parcel Number 14-18D in Bath County, VA; 31.57 acres (“our property”).

5. My wife and I spent much of our retirement savings on purchasing our property in January of 2008; the main reason that we purchased this property are views of our meadow and the forested mountains.

6. Our property includes fields, trees, and a log cabin.

<sup>1</sup> Screenshot obtained from ACP’s route map on website: <https://atlanticcoastpipeline.com/recent-updates/default.aspx#map>, Last visited: October 29, 2018.

7. The log home on our property was originally constructed in approximately 1900.
8. Much of our home was reconstructed in approximately 2006. This reconstruction included new infrastructure, wiring, and appliances.
9. According to ACP's right of way exhibit sent to us on March 15, 2017, ACP wants to permanently take 2.84 acres of our land, establish a 'temporary right of way' area of 1.97 acres, and have extra work space of .64 acres. *Exhibit 1B*, ACP's Right of Way Exhibit. ACP also wants to put a valve on our property. *Id.*
10. There also may be part of an access road built on our land, but to date, we have not received any correspondence from ACP about this potential road. *See Exhibit 1C*, CSI Map of pipeline and access road on our property.<sup>2</sup>

**(B) Communications with ACP**

11. In early 2016, my wife and I heard through a neighbor that ACP was planning to possibly reroute its pipeline through Bath County and our property.
12. On or about March 9, 2016, we attended a meeting at the Bath County High School hosted by ACP, wherein ACP representatives discussed with the community generally where the pipeline's alternative route would be located.
13. On March 12, 2016, I submitted a comment to the Federal Energy Regulatory Commission (FERC), discussing the physical dangers of routing the proposed pipeline through Bath County, VA.
14. By letter to us dated March 18, 2016, ACP stated that they wanted to survey and study our property. The letter said: "Please be aware that granting permission to survey does not imply that you agree to construction of the pipeline on your property." The letter also stated that

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<sup>2</sup>Pipeline CSI Mapping System at: <https://dpmc-gis.maps.arcgis.com/apps/MapSeries/index.html?appid=17aa6a29849945beb09ae33677fec61a>  
Last visited: October 31, 2018.



we “should have received” information about the ACP in an earlier mailing, but we do not have possession of any such earlier ACP communication, and we do not recall receiving any written communications from ACP prior to the March 18<sup>th</sup> letter.

15. By another letter dated March 23, 2016, the ACP stated that: “On October 2, 2015, FERC published a Notice of Application (NOA) for the project signifying its acceptance of the filing of Atlantic’s Application. [...] If the preferred route is approved, the ACP could affect land you own or rent.” Enclosed with that letter were the following documents:

- FERC’s Notice of Application (Dated October 2, 2015)
- FERC Landowner Brochure: *An Interstate Natural Gas Facility on my Land? What Do I Need to know?*
- ACP Landowner Rights Handout
- ACP Project Overview Map
- List of libraries where you can view a copy of Atlantic’s Application to FERC

16. The FERC Notice of Application enclosed with the ACP stated that there were two ways in which to become involved with the project:

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

17. However, the deadline to intervene in FERC proceedings in the enclosed Notice of Application (“NOA”) **was stated to be by 5:00pm on October 23, 2015, or five (5) months before ACP even sent the letter to us.**

18. The NOA went on to state:

**However, a person does not have to intervene in order to have comments considered. The second way to participate** is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. (emphasis added).

19. Also, among the 45 pages worth of documents sent by ACP on March 23, 2016 to us was a FERC brochure entitled '*An Interstate Natural Gas Facility on My Land? What do I Need to Know?*' The brochure gave contrary instructions on how to intervene to that of the vague NOA intervention instructions noted above. For example, the brochure stated that you have to file 14 paper copies with the Commission or file electronically, while the Notice of Application stated that you had to file 7 paper copies with the Commission and serve all of the parties. The brochure also noted that you "normally" have to file an intervention within 21 days of FERC's notice of application on the federal register, but again, we received all of this information **5 months after** the notice of application was published. None of this made any kind of sense.

20. There was a 'Landowner Rights' ACP publication also enclosed with the letter. The 4-page, single spaced document, it included the following section on Landowner Rights in the FERC Review process:

Landowners have certain rights in proceedings before FERC and in any court proceeding related to a Commission decision. A brief summary is provided below. For additional information visit the FERC website at [www.ferc.gov/for-citizens/get-involved.asp](http://www.ferc.gov/for-citizens/get-involved.asp).

- Accessing and inspecting, via elibrary, all public documents associated with the proposed project
- Making your concerns known in writing via eFiling to the Commission and its staff
- Participating in public meetings held in the vicinity of the proposed project area



- Participating in environmental site reviews in the vicinity of the proposed project area
- eFiling comments on draft Environmental Assessments and Environmental Impact Statements
- Intervening on a specific proposed project
- Having the Commission's decision reviewed in federal court (must be an intervener to do this)
- Filing a Critical Energy Infrastructure Information Request

21. Based on the correspondence received, my wife and I drew the logical conclusion that our rights would be preserved and upheld if we filed comments in the FERC proceedings and attended meetings. Nowhere did ACP state that if we did not intervene in the proceedings (and based on the correspondence ACP sent us, the time had clearly passed anyway), that we would be waiving our rights to have *any* authoritative body review FERC's decision to allow ACP to take our land.

22. By a handwritten note dated March 24, 2016, we responded to ACP's March 18<sup>th</sup> request, denying them permission to enter our property.

23. By letter dated March 25, 2016, ACP stated that it had submitted an Amendment to its FERC filings in order "to incorporate certain route changes intended to improve the proposed pipeline route."

24. In its March 25<sup>th</sup> letter, ACP stated: "Each property that is to be crossed by the ACP will need an easement agreement completed between Atlantic and the landowner." Again, there was nothing about intervention mentioned in the ACP letter.

25. Further, enclosed with the ACP March 25<sup>th</sup> letter was a project overview map, and a 3 page, single-spaced 'Notice of Amendment to Application,' dated March 22, 2016, which had the exact same language from the original, October 2, 2015 Notice of Application quoted above in paragraphs 16 and 18. However, a difference being that the comment date or deadline to

intervene in FERC proceedings noted in the March 22<sup>nd</sup> Notice of Amendment to Application was by 5:00pm on April 12, 2016.

26. March 25, 2016 was a Friday. Assuming that we received the ACP March 25<sup>th</sup> letter by Monday, March 28<sup>th</sup>, and assuming that at the time we understood that we *had* to intervene to preserve our rights to object to ACP taking our land, we would have had only 15 days to figure out how to intervene as a matter of right in the FERC proceedings and then intervene. However, because of the over 50 pages worth of documents received by the end of March of 2016, and the contradictory and confusing language noted above, neither my wife nor I knew or understood that we *had* to intervene in the FERC proceedings to preserve our rights to challenge FERC's decision in Court.

27. To date, we have received over 200 pages worth of correspondence from ACP. We have also received correspondence from FERC and the United States Department of Agriculture about the project, but nothing outside of the March 23, 2016 and March 25, 2016 correspondence from ACP mentions or explains what intervention is or why it matters.

28. On July 19, 2016, I submitted a comment to FERC noting that ACP's claim that there will be no visual impact from the pipeline at Little Valley Run is false.

29. On February 12, 2017, I submitted a comment to FERC noting that ACP's claim that real estate value will remain unaffected by the pipeline was false, as the pipeline would carve up our meadow view, and be within 100 yards of our home.

30. ACP and its agents and/or representatives never clearly communicated to me or my wife where or how we could intervene in the FERC proceedings, or what information needed to be included for a motion to intervene in FERC proceedings to be granted.

31. ACP did not communicate to us that we would be completely waiving our rights to object to ACP taking our land if we did not intervene in the FERC proceedings.

32. ACP did not communicate that intervention in the FERC proceedings was the *only* means of preserving our rights to having any authoritative or judicial review FERC's decision to allow ACP to take our land.

33. **If ACP had communicated the information noted above in paragraphs 30, 31, & 32, my wife and I absolutely would have intervened in the FERC proceeding.**

**(C) Uniquely Adverse Effects on our Land**

34. We are very worried and upset about the potentially imminent construction of the ACP on our property.

35. As noted above, we bought our property for the view and for the serenity of the surroundings, including the meadow, trees, streams, and mountains. Among other improvements we made to our property, we built a patio overlooking the meadow by our home because of the beautiful view. *See* Exhibit 1D, Photos of our Patio. During the spring, summer, and early fall, we eat lunch and dinner out there, weather permitting. We also will read out on the patio in the afternoons. ACP plans on building the pipeline directly through the heart of the meadow and trees. In short, the ACP will ruin the reason we purchased the property in the first place.

36. Further, the pipeline will cause irreparable harm to the property and permanently degrade its value. We will lose the views that make our property unique and an attractive place to spend time.

37. We depend on a high-quality, local spring for water in our house. The pipeline will transect the pipe that carries water from the spring to our house, and damage or impede our ability to get water on the property. ACP will at the very least have to repair the pipe and ensure

that we will still be able to get water from the spring. We may also have to depend on ACP for ongoing maintenance of the water pipe and for guaranteed access to the water. We have very little faith that ACP would successfully fulfill such an obligation.

38. Our log home will also be within 100 yards of the pipeline, or well within the blast radius or "immolation zone" if an accident were to occur. In other words, if an accident were to occur on the pipeline, as does happen, both my wife and I would be killed if we were in our cabin home.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746).

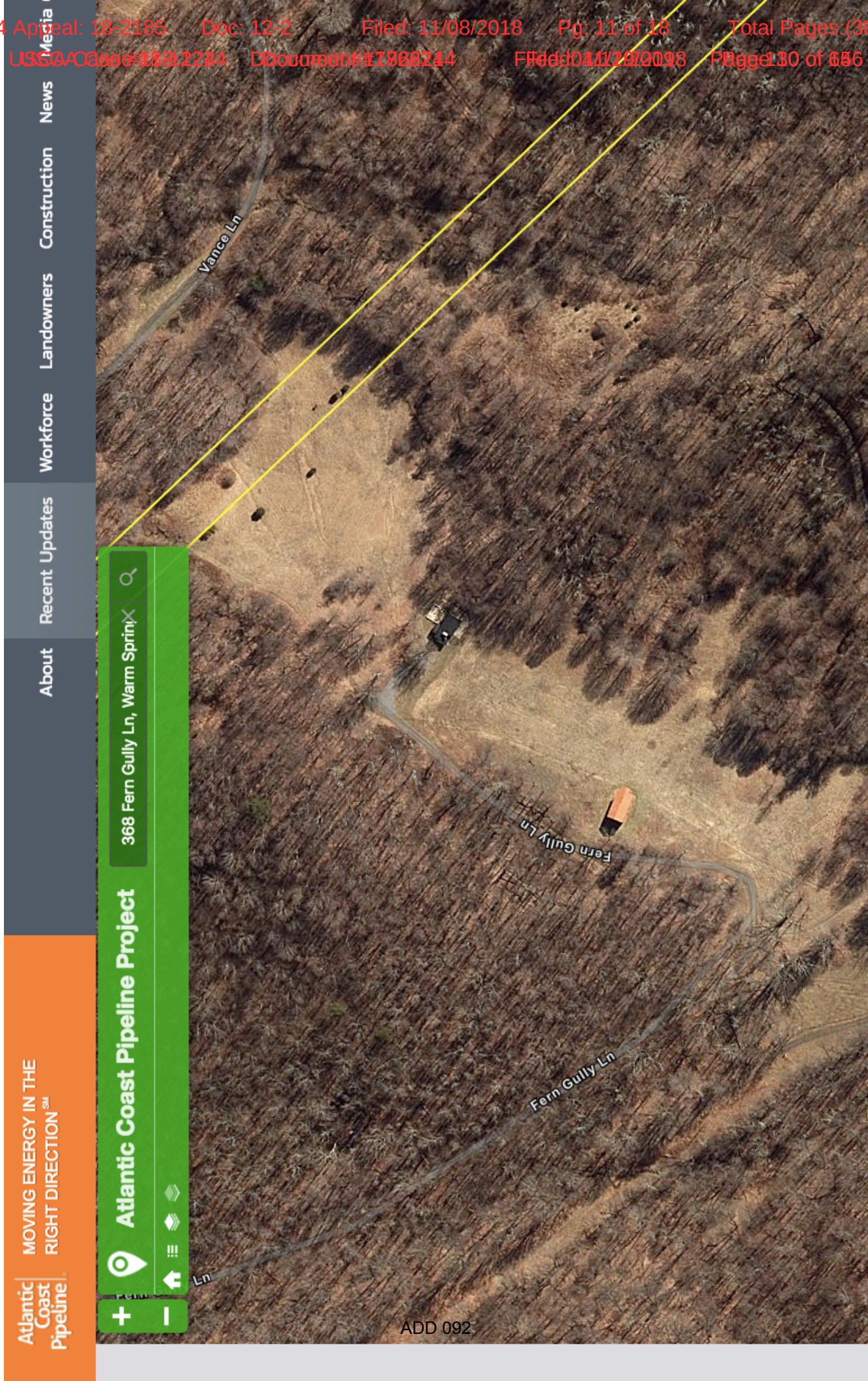
Executed on November 8, 2018  
(Date)

Victor C. Baum  
VICTOR C. BAUM



# EXHIBIT 1A





Atlantic Coast Pipeline<sup>SM</sup>  
MOVING ENERGY IN THE  
RIGHT DIRECTION<sup>SM</sup>

Atlantic Coast Pipeline Project

368 Fern Gully Ln, Warm Springs, GA



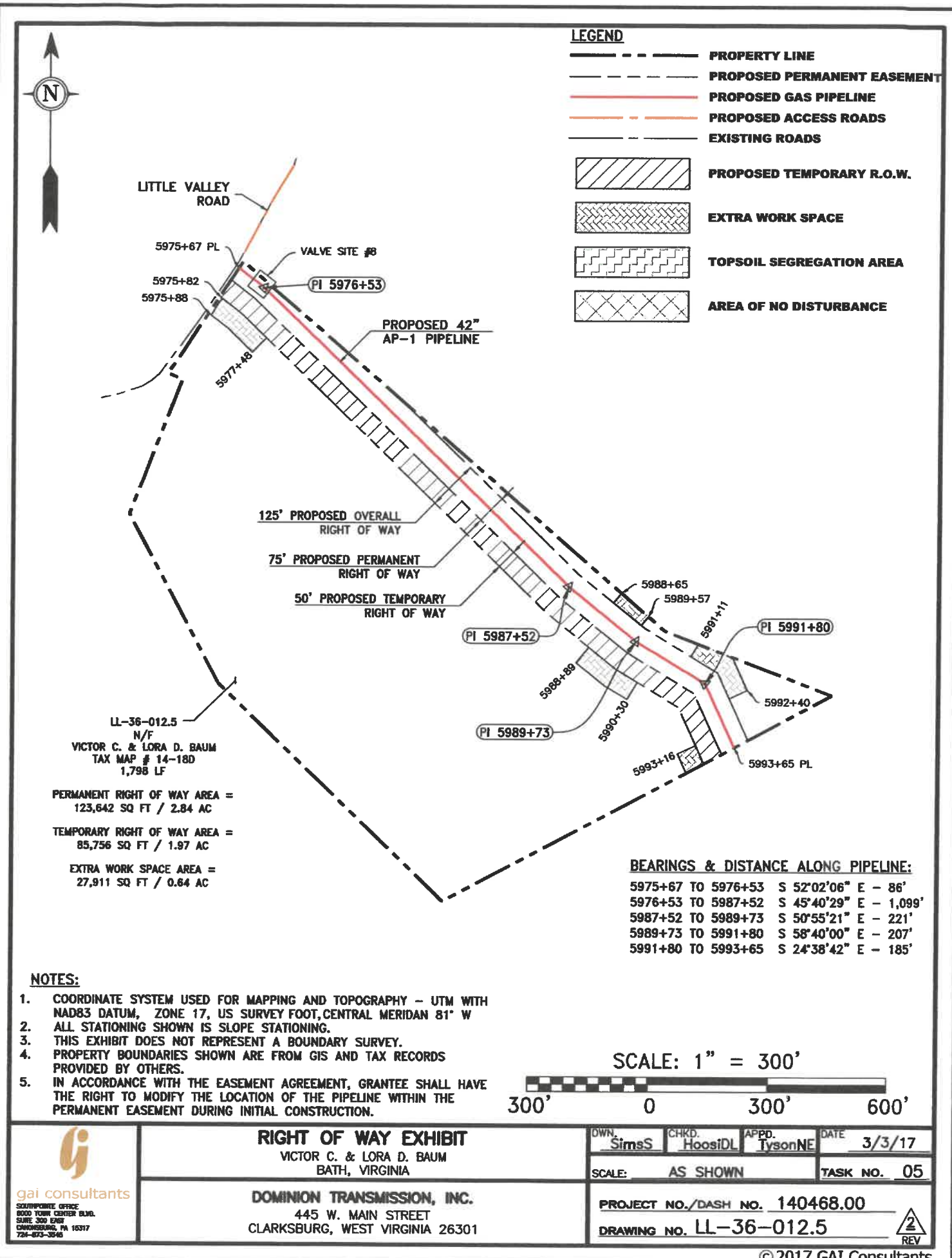
ADD 092



# EXHIBIT 1B

## EXHIBIT A

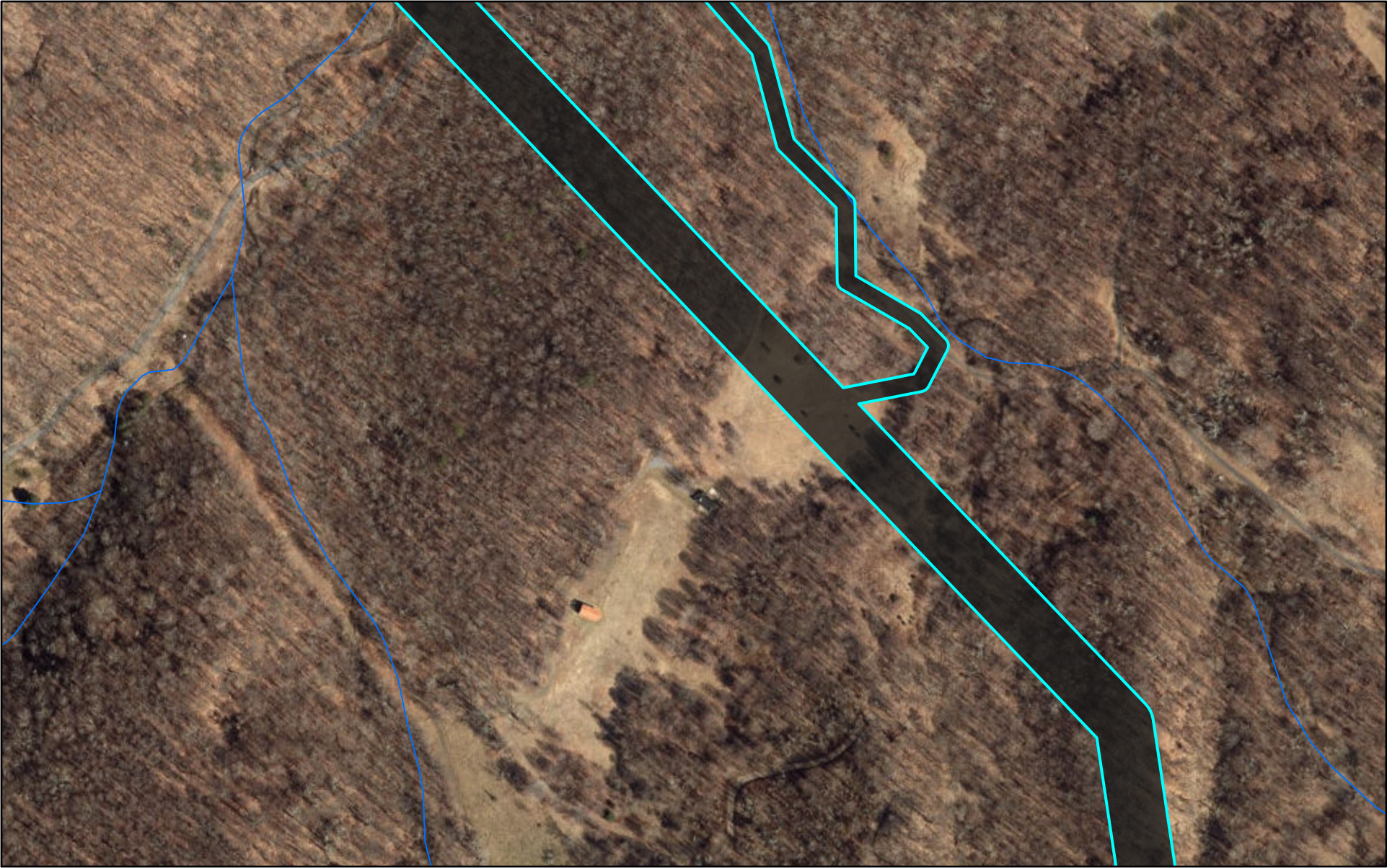
GAI CAD FILE: Z:\ENERGY\2014\1404468.00 - DOMINION - SOUTHEAST PIPE\GAI\MON FOREST REKOUTE.DWG\PROPERTY PLATS\LL-36-012.5.DWG



# EXHIBIT 1C



Baums Property ACP Pipeline CSI



10/31/2018, 9:47:46 AM

- WATER RESOURCE INFORMATION: Rivers and Streams
- ACP INFRASTRUCTURE: Right-of-Way & Access Road Corridors

ADD 096

1:4,514

00.030.060.12 mi

00.050.10.19 km

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus

Web AppBuilder for ArcGIS

Commonwealth of Virginia, USDA FSA |

# EXHIBIT 1D









# EXHIBIT 2

THE UNITED STATES COURT OF APPEALS  
 FOR THE FOURTH CIRCUIT

**BOLD ALLIANCE et al.,**

*Petitioners,*

v.

**FEDERAL ENERGY REGULATORY  
 COMMISSION,**

*Respondent.*

Case No. 18-2185

DECLARATION OF LORA BAUM

I, Lora Baum, state and affirm as follows:

1. I am competent to give this declaration, and all information herein is based on my own personal knowledge, unless otherwise indicated.

2. I am sixty one years old.

**(A) Our Property**

3. Atlantic Coastal Pipeline (“ACP”) seeks to take land that my husband and I co-own in Bath County, Virginia. *See Exhibit 1A*, ACP’s pipeline planned route through our property.<sup>1</sup>

4. The land at issue is located at 368 Fern Gully Lane, Warm Springs, VA 24484; Tax Parcel Number 14-18D in Bath County, VA; 31.57 acres (“our property”).

5. My husband and I spent much of our retirement savings on purchasing our property in January of 2008; the main reason that we purchased this property are views of our meadow and the forested mountains.

<sup>1</sup> Screenshot obtained from ACP’s route map on website: <https://atlanticcoastpipeline.com/recent-updates/default.aspx#map>. Last visited: October 29, 2018.

6. Our property includes fields, trees, and a log cabin.
7. The log home on our property was originally constructed in approximately 1900.
8. Much of our home was reconstructed in approximately 2006. This reconstruction included new infrastructure, wiring, and appliances.
9. According to ACP's right of way exhibit sent to us on March 15, 2017, ACP wants to permanently take 2.84 acres of our land, establish a 'temporary right of way' area of 1.97 acres, and have extra work space of .64 acres. *Exhibit 1B*, ACP's Right of Way Exhibit. ACP also wants to put an above-ground valve on our property. *Id.*
10. There also may be part of an access road built on our land, but to date, we have not received any correspondence from ACP about this potential road. *See Exhibit 1C*, CSI Map of pipeline and access road on our property.<sup>2</sup>

**(B) Communications with ACP**

11. In early 2016, my husband and I heard through a neighbor that ACP was planning to possibly reroute its pipeline through Bath County and our property.
12. On or about March 9, 2016, we attended a meeting at the Bath County High School hosted by ACP, wherein ACP representatives discussed with the community generally where the pipeline's alternative route would be located.
13. In mid-March of 2016, I signed a petition along with 14 other Virginians to oppose the Atlantic Coast Pipeline. It was filed with FERC as a comment on March 21, 2016.
14. By letter to us dated March 18, 2016, ACP stated that they wanted to survey and study our property. The letter said: "Please be aware that granting permission to survey does not imply that you agree to construction of the pipeline on your property." The letter also stated that

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<sup>2</sup>Pipeline CSI Mapping System at: <https://dpmc-gis.maps.arcgis.com/apps/MapSeries/index.html?appid=17aa6a29849945beb09ae33677fec61a>  
Last visited: October 31, 2018.



we “should have received” information about the ACP in an earlier mailing, but we do not have possession of any such earlier ACP communication, and we do not recall receiving any written communications from ACP prior to the March 18<sup>th</sup> letter.

15. By another letter dated March 23, 2016, the ACP stated that: “On October 2, 2015, FERC published a Notice of Application (NOA) for the project signifying its acceptance of the filing of Atlantic’s Application. [...] If the preferred route is approved, the ACP could affect land you own or rent.” Enclosed with that letter were the following documents:

- FERC’s Notice of Application (Dated October 2, 2015)
- FERC Landowner Brochure: *An Interstate Natural Gas Facility on my Land? What Do I Need to know?*
- ACP Landowner Rights Handout
- ACP Project Overview Map
- List of libraries where you can view a copy of Atlantic’s Application to FERC

16. The FERC Notice of Application enclosed with the ACP stated that there were two ways in which to become involved with the project:

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

17. However, the deadline to intervene in FERC proceedings in the enclosed Notice of Application (“NOA”) **was stated to be by 5:00pm on October 23, 2015, or five (5) months before ACP even sent the letter to us.**

18. The NOA went on to state:

**However, a person does not have to intervene in order to have comments considered. The second way to participate** is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. (emphasis added).

19. Also, among the 45 pages worth of documents sent by ACP on March 23, 2016 to us was a FERC brochure entitled '*An Interstate Natural Gas Facility on My Land? What do I Need to Know?*' The brochure gave contrary instructions on how to intervene to that of the vague NOA intervention instructions noted above. For example, the brochure stated that you have to file 14 paper copies with the Commission or file electronically, while the Notice of Application stated that you had to file 7 paper copies with the Commission and serve all of the parties. The brochure also noted that you "normally" have to file an intervention within 21 days of FERC's notice of application on the federal register, but again, we received all of this information **5 months after** the notice of application was published. None of this made any kind of sense.

20. There was a 'Landowner Rights' ACP publication also enclosed with the letter. The 4-page, single spaced document, it included the following section on Landowner Rights in the FERC Review process:

Landowners have certain rights in proceedings before FERC and in any court proceeding related to a Commission decision. A brief summary is provided below. For additional information visit the FERC website at [www.ferc.gov/for-citizens/get-involved.asp](http://www.ferc.gov/for-citizens/get-involved.asp).

- Accessing and inspecting, via elibrary, all public documents associated with the proposed project
- Making your concerns known in writing via eFiling to the Commission and its staff
- Participating in public meetings held in the vicinity of the proposed project area



- Participating in environmental site reviews in the vicinity of the proposed project area
- eFiling comments on draft Environmental Assessments and Environmental Impact Statements
- Intervening on a specific proposed project
- Having the Commission's decision reviewed in federal court (must be an intervener to do this)
- Filing a Critical Energy Infrastructure Information Request

21. Based on the correspondence received, my husband and I drew the logical conclusion that our rights would be preserved and upheld if we filed comments in the FERC proceedings and attended meetings. Nowhere did ACP state that if we did not intervene in the proceedings (and based on the correspondence ACP sent us, the time had clearly passed anyway), that we would be waiving our rights to have *any* authoritative body review FERC's decision to allow ACP to take our land.

22. By a handwritten note dated March 24, 2016, we responded to ACP's March 18<sup>th</sup> request, denying them permission to enter our property.

23. By letter dated March 25, 2016, ACP stated that it had submitted an Amendment to its FERC filings in order "to incorporate certain route changes intended to improve the proposed pipeline route."

24. In its March 25<sup>th</sup> letter, ACP stated: "Each property that is to be crossed by the ACP will need an easement agreement completed between Atlantic and the landowner." Again, there was nothing about intervention mentioned in the ACP letter.

25. Further, enclosed with the ACP March 25<sup>th</sup> letter was a project overview map, and a 3 page, single-spaced 'Notice of Amendment to Application,' dated March 22, 2016, which had the exact same language from the original, October 2, 2015 Notice of Application quoted above in paragraphs 16 and 18. However, a difference being that the comment date or deadline to

intervene in FERC proceedings noted in the March 22<sup>nd</sup> Notice of Amendment to Application was by 5:00pm on April 12, 2016.

26. March 25, 2016 was a Friday. Assuming that we received the ACP March 25<sup>th</sup> letter by Monday, March 28<sup>th</sup>, and assuming that at the time we understood that we *had* to intervene to preserve our rights to object to ACP taking our land, we would have had only 15 days to figure out how to intervene as a matter of right in the FERC proceedings and then intervene. However, because of the over 50 pages worth of documents received by the end of March of 2016, and the contradictory and confusing language noted above, neither my husband nor I knew or understood that we *had* to intervene in the FERC proceedings to preserve our rights to challenge FERC's decision in Court.

27. To date, we have received over 200 pages worth of correspondence from ACP. We have also received correspondence from FERC and the United States Department of Agriculture about the project, but nothing outside of the March 23, 2016 and March 25, 2016 correspondence from ACP mentions or explains what intervention is or why it matters.

28. By letter dated March 19, 2018, I wrote to FERC requesting that they not grant ACP its request to clear trees outside of the permitted time period, as the reasons the tree clearing restrictions were in place had nothing to do with the pipeline. This was filed with FERC as a comment on March 26, 2018.

29. ACP and its agents and/or representatives never clearly communicated to me or my husband where or how we could intervene in the FERC proceedings, or what information needed to be included for a motion to intervene in FERC proceedings to be granted.

30. ACP did not communicate to us that we would be completely waiving our rights to object to ACP taking our land if we did not intervene in the FERC proceedings.



31. ACP did not communicate that intervention in the FERC proceedings was the *only* means of preserving our rights to having any authoritative or judicial review FERC's decision to allow ACP to take our land.

32. **If ACP had communicated the information noted above in paragraphs 29, 30, & 31, my husband and I absolutely would have intervened in the FERC proceeding.**

**(C) Uniquely Adverse Effects on our Land**

33. We are very worried and upset about the potentially imminent construction of the ACP on our property.

34. As noted above, we bought our property for the view and for the serenity of the surroundings, including the meadow, trees, streams, and mountains. Among other improvements we made to our property, we built a patio overlooking the meadow by our home because of the beautiful view. *See* Exhibit 1D, Photos of our Patio. During the spring, summer, and early fall, we eat lunch and dinner out there, weather permitting. We also will read out on the patio in the afternoons. ACP plans on building the pipeline directly through the heart of the meadow and trees. In short, the ACP will ruin the reason we purchased the property in the first place.

35. Further, the pipeline will cause irreparable harm to the property and permanently degrade its value. We will lose the views that make our property unique and an attractive place to spend time.

36. We depend on a high-quality, local spring for water in our house. The pipeline will transect the pipe that carries water from the spring to our house, and damage or impede our ability to get water on the property. ACP will at the very least have to repair the pipe and ensure that we will still be able to get water from the spring. We may also have to depend on ACP for

ongoing maintenance of the water pipe and for guaranteed access to the water. We have very little faith that ACP would successfully fulfill such an obligation.

37. Our log home will also be within 100 yards of the pipeline, or well within the blast radius or "immolation zone" if an accident were to occur. In other words, if an accident were to occur on the pipeline, as does happen, both my husband and I would be killed if we were in our cabin home.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746).

Executed on 11/8/2018.  
(Date)

Lora Baum  
LORA BAUM

# EXHIBIT 3

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Atlantic Coast Pipeline, LLC

Docket Nos. CP15-554-000

PF15-6-000

Dominion Transmission, Inc.

CP15-555-000

PF15-5-000

Atlantic Coast Pipeline, LLC and Piedmont Natural Gas Company, Inc. CP15-556-000

NOTICE OF APPLICATION

(October 2, 2015)

Take notice that on September 18, 2015, Atlantic Coast Pipeline, LLC (ACP), 120 Tredgar Street, Richmond, Virginia 23219 filed an application under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations requesting authorization to install, construct, own, operate and maintain certain natural gas pipeline facilities for its Atlantic Coast Pipeline project consisting of: i) approximately 564.1 miles of various diameter pipeline; ii) three greenfield compressor stations totaling 117,545 horsepower (HP) of compression; and iii) various appurtenant and auxiliary facilities designed to transport up to approximately 1.5 million dekatherms per day (MMDth/d) of natural gas. Facilities to be constructed are located in Harrison, Lewis, Upshur, Randolph, and Pocahontas Counties, West Virginia; Highland, Augusta, Nelson, Buckingham, Cumberland, Prince Edward, Nottoway, Dinwiddie, Brunswick, Greenville and Southampton Counties and the Cities of Suffolk and Chesapeake, Virginia; and Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland and Robeson Counties, North Carolina. Additionally, ACP is seeking Blanket Certificates of public convenience and necessity pursuant to Part 284, Subpart G authorizing the transportation of natural gas for others, and Part 157, Subpart F authorizing certain facility construction, operation and abandonment activities, all as more fully described in the application.

In a related filing, on September 18, 2015, Dominion Transmission, Inc. (DTI), 707 East Main Street, Richmond, Virginia 23219, filed under sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations requesting authorization to abandon, install, construct, own, operate and maintain certain natural gas pipeline facilities for its Supply Header Project (Supply Header) located in Westmoreland and Greene Counties, Pennsylvania; and Harrison, Doddridge, Tyler, Wetzel, and Marshall Counties, West Virginia. The Supply Header would provide transportation service of approximately 1.5 MMDth/d from supply areas on the DTI system for delivery to the ACP. The Supply Header facilities would consist of: i) two pipeline loops of 30-inch diameter pipeline totaling 37.5 miles; ii) added compression at three existing compressor stations totaling 70,530 HP; and iii) various appurtenant and auxiliary facilities. DTI also proposes to abandon two compressor units in Wetzel County, West Virginia, all as more fully described in the application.

Finally, on September 18, 2015, ACP and Piedmont Natural Gas Company, Inc. (Piedmont), 4720 Piedmont Row Drive, Charlotte, North Carolina 28210, filed a joint application under section 7(c) of the NGA and Part 157 of the Commission's regulations seeking



authorization of a lease pursuant to which ACP will lease capacity (Lease) on Piedmont's system for use by ACP in providing service under its FERC Gas Tariff, primarily for the Public Service Company of North Carolina, Inc. Piedmont, a local distribution company (LDC), also requests a limited jurisdiction certificate in order to enter into the Lease with ACP for the interstate transportation of gas through Piedmont's facilities. Piedmont also requests a determination that the Lease will not affect its status and a LDC not otherwise subject to Commission regulation, all as more fully described in the application.

The filings may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or TTY, (202) 502-8659.

Any questions regarding ACP's or DTI's projects should be directed to Angela Woolard, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219; telephone: 866-319-3382.

Any questions regarding the ACP – Piedmont Lease should be directed to Matthew Bley, Director, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219; telephone: 866-319-3382.

On November 13, 2014, the Commission staff granted ACP's and DTI's requests to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket Nos. PF15-6-000 and PF15-5-000, respectively to staff activities involving the combined Atlantic Coast Pipeline and Supply Header projects. Now, as of the filing of the applications on September 18, 2015, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP15-554-000 for the Atlantic Coast Pipeline and CP15-555-000 for DTI's Supply Header project, as noted in the caption of this Notice.

Within 90 days after the Commission issues a Notice of Application for the ACP, Supply Header and ACP – Piedmont Lease projects, the Commission staff will issue a Notice of Schedule for Environmental Review that will indicate the anticipated date for the Commission's staff issuance of the final EIS analyzing both the three proposals. The issuance of a Notice of Schedule for Environmental Review will also serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's final EIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive

copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comment Date: 5:00pm Eastern Time on October 23, 2015

Kimberly D. Bose,  
Secretary.

# EXHIBIT 4



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Atlantic Coast Pipeline, LLC

Docket Nos. CP15-554-001  
PF15-6-000

NOTICE OF AMENDMENT TO APPLICATION

(March 22, 2016)

Take notice that on March 14, 2016, Atlantic Coast Pipeline, LLC (ACP), 120 Tredgar Street, Richmond, Virginia 23219, filed an amendment to its application under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations requesting authorization to install, construct, own, operate and maintain certain natural gas pipeline facilities for its Atlantic Coast Pipeline project.

ACP's pending application seeks authorization of: i) approximately 564.1 miles of various diameter pipeline; ii) three greenfield compressor stations totaling 117,545 horsepower (HP) of compression; and iii) various appurtenant and auxiliary facilities designed to transport up to approximately 1.5 million dekatherms per day (MMDth/d) of natural gas. In the amendment, ACP proposes a major route change near the Monongahela and George Washington National Forests that would affect landowners in Randolph and Pocahontas Counties, West Virginia, and Highland, Bath and Augustana Counties, Virginia. Other, smaller route changes proposed in the amendment would affect landowners in Randolph and Pocahontas Counties, West Virginia, Bath, Nelson and Dinwiddie Counties, Virginia, and Cumberland and Johnston Counties, North Carolina. The amended facilities would increase the total length of the pipeline to 599.7 miles and compressor station HP from 40,715 HP to 53,515 HP at the proposed Buckingham County, Virginia compressor station, all as more fully described in the application.

The filings may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or TTY, (202) 502-8659.

Any questions regarding ACP's or DTI's projects should be directed to Angela Woolard, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219; telephone: 866-319-3382.

Within 90 days after the Commission issues a Notice of Amendment to Application for the ACP, the Commission staff will issue a Notice of Schedule for Environmental Review that will indicate the anticipated date for the Commission's staff



issuance of the final EIS analyzing ACP's amended proposal, as well as Dominion Transmission, Inc.'s and Atlantic Coast Pipeline, LLC and Piedmont Natural Gas Company, Inc.'s associated proposals pending in Docket Nos. CP15-555-000 and CP15-556-000, respectively. The issuance of a Notice of Schedule for Environmental Review will also serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's final EIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order. At a future date, the Commission will issue a *Supplemental Notice of Intent to Prepare an Environmental Impact Statement* that opens a supplemental scoping period and announces procedures to solicit environmental

comments on the amended application. This Notice will be mailed to all parties on the Commission's environmental mailing list for this docket.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comment Date: 5:00pm Eastern Time on April 12, 2016.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

# EXHIBIT 5

Victor Baum, Charlottesville, VA.  
 Kimberly D. Bose, Secretary  
 Federal Energy Regulatory Commission  
 888 First Street, NE  
 Washington, DC 20426

Re: Docket No. CP15-554

To the Commission:

The path of the proposed Mid Atlantic pipeline has recently been reconfigured. The massive economic, ecologic and engineering shortcomings of this pipeline are well known to all; I will address my concerns to the new proposed route through Bath County, Virginia, very specifically through Little Valley, near Bolar.

Given the very real dangers listed below, I simply cannot understand why FERC has not opened a new scoping period with the newly revised route. Please step back- the primary function of government is to protect its citizens. That should be your first concern.

- It is my understanding that ACP indicates that the route crosses Back Creek Mountain after crossing Route 220 coming from west to east. That is incorrect. It crosses Little Mountain east of route 220. This is the mountain which comprises the west side of Little Valley.

- This valley has a blind end. In the case of a massive pipeline failure, as has occurred elsewhere, there would be no mode of exit and several families would be trapped. During construction parts of the valley would be inaccessible - there is but a single road.

- Little Valley Road has been designated by the Virginia Department of Transportation as a "Rural Route" which means it cannot be widened and the trees on the sides of the road cannot be cut or ditches dug keeping it as an original route.

- o As a rural route Little Valley Road cannot accommodate in any way the large numbers of heavy vehicles that would need to use it.

- It is my understanding that the ACP submittal to FERC did not list Little Valley Run as a stream, and didn't mention Little Valley at all. Please let me repeat: Little Valley is not mentioned at all. This "non-stream" has had massive flooding every 2 to 3 years. In fact it flooded to such an extent this past summer (2015) that the channel relocated right in the area of the proposed pipeline crossing. Other parts of the Little Valley Run floodplain were hit equally hard, and worse- massive boulders were strewn and a large car bridge was washed away. Stream erosion and land movement of this magnitude should be a prohibiting factor in placing an extremely volatile pipe in Little Valley.

- The sole water source for some families is springs. These are directly in the proposed path and will almost certainly be damaged if not

destroyed. This water is presently superbly clear and potable. Without these springs portions of the valley will become uninhabitable.

- It is also my understanding that this is untried new technology. The specific issues in the valley are:

- o Karst that is geologically unstable with significant amounts of underground water. There are warm springs in the immediate area.

- o The grade for the pipeline to exit of the valley, particularly to the east, is exceedingly steep.

- There are a large number of butternut, or white walnut, including many larger ones directly in the proposed route. They are not on the endangered species list in the United States (they are in Canada), but they are listed as regional forest sensitive in the Monongahela forest, 10 miles to the west, and the USDA Forest Service states that healthy trees throughout the range should be conserved.

- We have a nearby population of endangered Indiana bats.

I implore you - please do due diligence and please do what's right.

Sincerely,  
Victor Baum

# EXHIBIT 6

Victor Baum, Charlottesville, VA.

Sirs - It is my understanding that Dominion's latest filing re: the Atlantic Coast Pipeline attests that there will be no visual impact at the Little Valley Run (Bath County, Virginia) proposed crossing. How extraordinarily outrageous. I live in Little Valley. With all due respect, they must hire a lot of blind people. They propose to carve off and denude the length of a mountain ridge and destroy, in perpetuity, acres of forest as well as placing as yet undefined miles of access roads to scar the landscape. No visual impact? How can you honestly believe anything Dominion says?



# EXHIBIT 7

Victor Baum, Charlottesville, VA.

The backers of the Atlantic Coast Pipeline (ACP) have made more than a few claims that stretch one's credulity and should stretch yours. I am writing to challenge one that is so blatantly outrageous that it calls into question anything they claim. I am referring to their claim that real estate values will be unaffected. I am sure others will reply and supply aggregate data, so let me tell you about our circumstances and let you decide if their claim is valid.

We have a c.1860 log home in Little Valley, Bath County, Virginia that was reconstructed in 2006 with all new infrastructure - wiring, appliances etc. It was sited specifically to take advantage of a magnificent view down a meadow and across Big Valley to the mountains beyond. It is truly wonderful. Even locals who visit remark on it. We recently built a stone patio to look out on that view. Even several people working for ACP have commented on the beauty of the view when they have come by, apparently oblivious to the fact they are among the very people working to destroy it.

The pipeline will bisect this meadow. Our house will be within 100 yards of the pipeline, well within the immolation zone in case of an accident. There will be a wide scar across the meadow and the woods on either side. An above ground valve access site will be on our property. This house was built as a weekend/vacation home. Much of our retirement savings was spent buying it. As a weekend/vacation home don't talk to me about not lowering the value of the property. I sincerely doubt we could even give it away. How can you believe these people? Please step back and do what's right. That is your obligation. Rolling over in front of big money is not doing what's right.

# EXHIBIT 8

USCA4 Appeal: 18-2185 Doc: 12-9 USSCA Case #18-2224 Document #1808244 Filed 04/17/2018 Page 13 of 66

mailed 3/15/16

Kimberly Bose, Secretary  
Federal Energy Regulatory Commission  
FERC Docket # PF15-554  
Atlantic Coast Pipeline

ORIGINAL

We, the undersigned, are opposed to the proposed the 590-mile Atlantic Coast Pipeline (ACP) through Central that would carry fracked gas into and through Virginia.
















Some of the concerns regarding the pipeline include:  
**Environmental Impacts:** Pipelines require a clear-cut the size of interstate highways, and would run through communities, farms, woodlands, streams and wetlands. The environmental destruction is irreparable, including harm to watersheds and water quality; damage to endangered and threatened species; disturbance of many unsuitable areas such as erosion-prone steep slopes, seeps, and springs; and extreme disruption of many pristine and native trout streams, wetlands and riparian areas, through bedrock dynamiting and excavation.

**Increased Dependence on Fossil Fuels:** The pipelines would expand demand for natural gas. We need to be moving away from reliance on fossil fuels, not increasing our dependence on them.

**Recreation Impacts:** The pipelines would also impact the nationally known and highly popular recreational features including the George Washington National Forest, the Blue Ridge Parkway, the Great Eastern Trail, and the iconic Appalachian Trail.

**Public Safety:** LNG pipelines often leak and can explode. Running pipelines through karst topography and mountainous terrain puts our communities at severe risk.

**Property Rights:** These projects are not in the public interest, and it is wrong to allow private businesses to use the extraordinary power of eminent domain to condemn family farms and homes.

Name	Address	City	State	Signature	Email Address
Lora Baum	919 Flordon Dr.	Charlottesville	VA		
Harold King	7304 Dry Run Rd	Burnsville	VA		hking@nganet.com
Heslie J. King	7304 Dry Run Rd	Burnsville	VA		heslieking@enginet.com
Shannon McCulley	10699 Dry Run Rd	Burnsville	VA		
James McCulley	10699 Dry Run Rd	Burnsville	VA		
Richard Dean	10671 Dry Run Rd	Burnsville	VA		
Becky Dean	10671 Dry Run Rd	Burnsville	VA		
James Mills	11182 Tower Hill Rd	Williamsville	VA		
Mary Ann Falls	10440 Dry Run Rd	Burnsville	VA		
Judith Ann Davis	12512 Dry Run Rd	Williamsville	VA		
Jesse Lambert	155 Red Oak Valley Rd	Burnsville	VA		now@netek.com
Michael Iscutt	919 Flordon Dr	Charlottesville	VA		
Ann Williams	1523 Wimbush Way	Charlottesville	VA		
Ann Allen	261 Buck Run Lane	Burnsville	VA		
Stephen Allen	261 Buck Run Lane	Burnsville	VA		

FILED  
SECRETARY OF THE  
COMMISSION  
2016 MAR 21 P 3  
FEDERAL ENERGY  
REGULATORY COMMISSION

# EXHIBIT 9

March 19, 2018

**ORIGINAL**

FILED  
SECRETARY OF THE  
ENERGY COMMISSION

2018 MAR 26 P 4:34

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

RECEIVED  
FEDERAL ENERGY  
REGULATORY COMMISSION

Re: Request to modify time of year tree clearing restrictions for the Atlantic Coast Pipeline, and Supply Header Projects under Docket Numbers CP15-554-000, CP15-554-001, and CP15-555-000.

Dear Secretary Bose:

My husband and I own a beautiful 30 acre property in Bath County, Virginia, which is slated to be crossed by the Atlantic Coast Pipeline (ACP). I understand that the builders of the ACP are now requesting to be allowed to clear trees outside the time limits specified to them, because they are behind schedule. I urge you to deny this request, because the reasons the tree clearing restrictions are in place have nothing to do with the ACP construction schedule. The limits are there to protect the natural resources of the area, preserving habitat for birds and other animals.

This entire project is based on financial gain, not necessity, and to allow it to proceed outside of the time period specified is yet another egregious act. Please deny this request.

Sincerely,



Lora D. Baum  
Fern Gully Lane  
Warm Springs, Virginia

and (mail to)  
919 Flordon Drive  
Charlottesville, VA 22901

loradbaum@gmail.com



**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of April, 2019, I have served the foregoing document upon all counsel registered to receive service through the Court's CM/ECF system via electronic filing.

Respectfully submitted,

/s/ David Bookbinder

David Bookbinder