

North Carolina
Department of Administration
Commission of Indian Affairs

Machelle Sanders
Secretary

Gregory A. Richardson
Executive Director

April 6, 2017

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

RE: Public Comments - Regarding the Atlantic Coast Pipeline

Dear Mr. Davis:

The North Carolina Commission of Indian Affairs writes in response to the Draft Environmental Impact Statement (DEIS) prepared by the Federal Energy Regulatory Commission regarding the proposed Atlantic Coast Pipeline described in Docket Nos. CP15-554-000, CP15-554-001, CP15-555-000, and CP15-556-000.

The Commission of Indian Affairs was organized in 1973 by North Carolina General Statute §143B Part 15 to ensure fair and effective dealings with American Indians throughout the state of North Carolina, to provide aid and protection for American Indians, to promote the rights of American Indians to pursue cultural and religious traditions, and for other purposes. Commission membership includes representatives from state and federally recognized Indian tribes, urban Indian organizations, state legislature, and executive departments. As such, the Commission of Indian Affairs has a strong interest in the potential impacts of the Atlantic Coast Pipeline as it relates to the American Indian population in North Carolina in particular the American Indian tribal communities.

The proposed pipeline route traverses territory traditionally held by the Meherrin, Haliwa-Saponi, Coharie, Lumbee, and other historic Indian tribes. Certain landscapes and environments along the proposed route hold special meaning to these tribes for a variety of cultural, spiritual, and historical reasons.

Data from the latest US Census shown in the DEIS (Appendix Table U1) indicate 29,696 American Indians living in census blocks along the North Carolina portion of the proposed route. This number equals approximately 25% of all American Indians living in the State of North Carolina and approximately 1% of all American Indians in the United States.

American Indians constitute only 3.8% of the total population of counties along the proposed pipeline route and 1.2% of the total state population, yet they make up 13% of North Carolinians living in census blocks along the proposed route. Using either reference, the proposed route would have highly disproportionate impacts on American Indians, specifically, because of the proposed geographic location of the Atlantic Coast Pipeline.

Given (1) the proposed route through tribally-significant environments and landscapes, (2) the large number of American Indian individuals that would be impacted by this project, and (3) the

disproportionate impacts on American Indians, the Commission of Indian Affairs strongly urges the Federal Energy Regulatory Commission to engage in meaningful consultations with tribal governments to understand and address their environmental, cultural, and other concerns associated with these communities.

Federal guidance documents pertaining to the National Environmental Policy Act¹ and the National Historic Preservation Act² encourage meaningful consultation between regulatory agencies and Indian tribes, even if those tribes are not federally recognized. In addition to consulting tribal governments, regulators should engage in meaningful consultations with Urban Indian Organizations and with the Commission of Indian Affairs itself to better understand and address the concerns of American Indians in North Carolina who stand to be impacted by this project.

We believe that such consultation is imperative if pipeline developers are to assure that historic sites, unmarked burials are not disturbed and that they are protected to the greatest degree possible in accordance with the following:

Discovery of Unmarked Burials or Human Remains

1. If unmarked human burial or skeletal remains are encountered during construction activities, Atlantic will comply with applicable provisions of North Carolina's "Unmarked Human Burial and Human Skeletal Remains Protection Act" (North Carolina General Statutes Chapter 70, Article 3).
2. Atlantic's Environmental Project Manager will direct the EI to flag or fence off the site (including the area within 100 feet of the find or the outer perimeter of a group of finds), and will notify the County sheriff, who will notify the County medical examiner as required by North Carolina General Statutes Chapter 70, Article 3.
3. Atlantic's Environmental Project Manager will notify the FERC of the find. Plan for the Unanticipated Discovery of Historic Properties or Human Remains during Construction in North Carolina.
4. If the County medical examiner determines that the remains are not modern or do not reflect a crime scene, and/or if they otherwise relinquish their jurisdiction over the remains, the County medical examiner will notify the state's Chief Medical Examiner, who in turn will notify the State Archaeologist of the discovery and the findings of the County medical examiner. The State Archaeologist will take charge of the remains.
5. The State Archaeologist will have 48 hours to make arrangements with the landowner for the protection or removal of the burial or remains.
6. If the remains are removed, the State Archaeologist will coordinate the excavation by a professional archaeologist. The professional archaeologist will report his/her opinion on the characteristics of the remains to the State Archaeologist within two days after the removal.
7. Atlantic's Environmental Project Manager will consult appropriate parties (e.g., the State Archaeologist, the NCDCCR, the Executive Director of the North Carolina Commission of Indian Affairs, federally

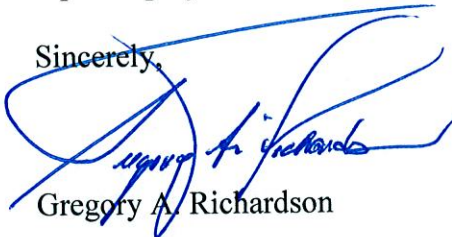
recognized Indian tribes, and/or the landowner) as directed by the FERC regarding additional steps to be followed.

8. If it is determined that the remains are Native American, a reasonable effort will be made to identify, locate, and notify the appropriate Tribe.
9. If it is determined the remains are not Native American, the State Archaeologist will attempt to determine the identity or next of kin of the deceased. If no next of kin are identified the remains will be transferred to the State Archaeologist and permanently curated.
10. The measures to protect the remains and associated artifacts will remain in effect until they have been fully evaluated, appropriate treatment of the discovery (if applicable) has been completed, and Atlantic has received written notice from the FERC to proceed with construction at the discovery site.

Finally, in addition to consultation with the tribes regarding the permitting process throughout the development of the Atlantic Coast Pipeline, we request that the NC Commission of Indian Affairs and the Coharie, Haliwa-Saponi, Meherrin and the Lumbee tribes be provided information about employment, contracting and vendor opportunities, prior to the rolling out of the project, if it is approved.

Thank you for the opportunity to submit Public Comments regarding the proposed Atlantic Coast Pipeline project in North Carolina.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregory A. Richardson", is written over a blue scribble.

Gregory A. Richardson

Contributors:

Environmental Justice (EJ) Committee, NC Commission of Indian Affairs
Jeff Anstead, Chairman, EJ Committee
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