

Haliwa-Saponi Indian Tribe

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April 4, 2017

Mr. Nathaniel Davis, Sr.
Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 204026

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

Dear Deputy Secretary Davis:

On behalf of the Tribal Council of the Haliwa-Saponi Indian Tribe, please find attached, comments concerning the Draft Environmental Impact Statement (DEIS) issued by the Federal Energy Regulatory Commission (FERC) with regards to the Atlantic Coast Pipeline (ACP).

While the current territory of our Indian tribe encompasses portions of Halifax, Warren, Franklin and Nash counties of North Carolina that thankfully, are not currently included in the proposed path of the project, the project path proposed is expected to transverse some of the areas that our ancestors have lived and resided since first sustained contact with European cultures. Therefore, we have cultural and religious concerns with regard to the current proposed project route.

Additionally, the residual impact of an operational pipeline such as that proposed would potentially pose negative impacts the environmental quality of our current territories. To summarize, our additional attached comments reflect the following concerns with regards to the DEIS:

-Neither FERC, nor ACP applicants (Atlantic Coast Pipeline, LLC and Dominion Transmission, Inc.) have adequately engaged the tribal government of the Haliwa-Saponi Indian Tribe throughout the pre-filing and DEIS preparation process;

-The DEIS does not adequately provide for the inclusion of the Haliwa-Saponi Indian Tribe as a stakeholder for emergency preparedness purposes;

-The DEIS does not provide an adequate plan for providing notices to the Haliwa-Saponi Indian Tribe with regards to cultural and archeological resources and inadvertent discovery of ancestors of our Tribe;

-The DEIS raises concerns about the impact to the environment, including, but not limited to water resources on tribal lands.

By way of this correspondence, the Haliwa-Saponi Indian Tribe is specifically requesting consultation with FERC as a consulting Indian tribe, as well as inclusion as a signatory and consulting party to any potential Memorandum or other programmatic agreement with regards to mitigation of adverse impacts of the ACP. In order to begin the process of initiation of meaningful tribal consultation, please contact our Tribal Administrator, Archie Lynch, at the information below, as he is our designated primary point of contact in regards to consultation on this matter.

Mr. Archie Lynch, Tribal Administrator
Haliwa-Saponi Indian Tribe
PO Box 99
Hollister, NC 27844
(252) 586-4017, extension 222
alynch@haliwa-saponi.com

The content of this letter, and its attachments, have been authorized for submission to you for and on behalf of the tribal government of the Haliwa-Saponi Indian Tribe. Thank you for the opportunity to provide comments on this project. Should you have any additional questions, again, please feel free to contact Archie Lynch at the information above.

Sincerely,



Dr. Brucie Ogletree Richardson
Chief



Rev. Michael Richardson
Tribal Council Chair



Mr. Archie Lynch
Tribal Administrator

cc: The Honorable Roy Cooper, Governor, State of North Carolina
The Honorable G.K. Butterfield, 1st District, United States Congress
The Honorable Richard Burr, NC Senator, United States Senate
The Honorable Thom Tillis, NC Senator, United States Senate

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

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

However, neither FERC nor Dominion has engaged the Haliwa-Saponi Tribal Government in a way that acknowledges its status as a tribal government. The tribe was not contacted during any of the pre-filing outreach, did not receive the NOI, and only received a notice of the DEIS.⁴

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

We find this conclusion to be unconvincing considering that the Haliwa-Saponi Tribal Government has not been engaged with at all throughout the pre-filing and DEIS process. At a minimum, we ask that accurate contact information be added to the distribution list for all future communications and solicitations for comment relating to this project:

Mailing Address:
PO Box 99
Hollister, NC 27844

Points of Contact:
Archie Lynch, Tribal Administrator
alynch@haliwa-saponi.com

¹ Draft EIS at ES-2.

² *Id.* at 1-12 to -13.

³ *Id.*

⁴ *Id.* at Appendix A, A-7.

⁵ *Id.* at 4-412 to -13.

⁶ *Id.* at 4-413.

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

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

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

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

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

⁷ *Id.* at 4-475.

⁸ *Id.* at 4-478.

⁹ *Id.*

¹⁰ *Id.* at 4-428 to -29.

¹¹ *Id.* at 4-435.

¹² *Id.*

¹³ *Id.*

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

IV. The DEIS raises concerns about water quality for bodies of water on tribal land, including the Roanoke River, Fishing Creek, Little Fishing Creek, Tar River, Sapony Creek, Stoney Creek, and Quankey Creek.

Construction and operation of the Atlantic Coast Pipeline (“ACP”) could create a number of hazards and impacts to waterways on which the Haliwa-Saponi depend for traditional cultural, spiritual, commercial, subsistence, and aesthetic reasons. The Tribe maintains important spiritual connections to the rivers, creeks and adjacent lands of their ancestral territories, but additionally relies on the fish and other riparian wildlife of these waters for both subsistence and commercial activity. Moreover, members of the Haliwa-Saponi ultimately derive their drinking water from sources or watersheds crossed by the ACP.

While the Draft Environmental Impact Statement (DEIS) does identify and discuss certain impacts to varying degrees, the Tribe ultimately believes the DEIS does not fully address the possible harms to numerous waterways in Eastern North Carolina. In particular, the Tribe raises special concern about the potential impacts to and insufficient coverage within the DEIS for Roanoke River, Fishing Creek, Little Fishing Creek, Tar River, Sapony Creek, Stoney Creek, and Quankey Creek. The ACP would cross each of these waterbodies (*see* 4-91), along with countless unnamed tributaries which feed directly into their waters (*see* Appendix K-1).

Each of the waterbody-crossing methods that would be employed—Horizontal Directional Drilling (HDD), Dry Crossing, and Open-cut crossings—are associated with various hazards that would impact aquatic stocks in the short term and leave the potential to impair some species on a longer scale. With HDD, inadvertent return flows of drilling mud can cause substantial erosion and sedimentation of the water body. (4-189). Atlantic plans to employ this technique on the Roanoke River, Fishing Creek, and the Tar River (Appendix K-1). The dry-crossing methods risks a number of effects, including higher sedimentation and turbidity downstream, destruction of aquatic habitat cover, introduction of pollutants through spills on the bed, trapping fish and other animals in the water intakes of the pump, and increased erosion downstream (4-190). Atlantic proposes to cross Little Fishing Creek, Sapony Creek, Stoney Creek, and Quankey Creek in this way (Appendix K-1). The third approach, wet, open-cut installation involves digging a trench within the flowing waterbody without diverting the stream, then backfilling the trench and restoring the banks as quickly as possible (4-192). This has been reserved as an alternative for several of the above-mentioned waterways.

¹⁴ *Id.* at 4-434.

Finally, Atlantic has proposed to use explosive blasting within 1000 feet of Fishing Creek, and within the stream bed itself of Quankey Creek (Appendix K-1). Additionally, the construction plan would allow Atlantic to conduct blasting adjacent to or in-stream of numerous unnamed tributaries of the Roanoke River (*see* Appendix K-1), which could result in sedimentation and contamination of those waters, negatively impacting water quality and aquatic life.

The Haliwa-Saponi are concerned with the foregoing risks to waters and the life they support. While the DEIS does discuss these risks, the tribe is concerned that there has not been enough attention paid to mitigating these impacts specifically, and how to mitigate them if they are more extensive than documented in the DEIS.