

Writing your comments to FERC

(deadline: 5:00pm April 16, 2021)

Comments are always most powerful and convincing when they are written in your own voice, telling your own story, expressing your own concerns. However, we thought that providing you with a list of some sample “talking points” might help you get started. Feel free to contact Friends of Nelson’s Landowner Liaison, Joyce Burton (434-361-2328, joybirdpt@gmail.com) if you need help or have questions.

Certificate Extension should be denied unless easement release is included

- ACP’s Restoration Plan is deficient for many reasons, not least of which is that it does not restore landowners’ full property rights. Unless that deficiency is corrected, FERC should deny the requested Certificate extension. Alternatively, FERC must make easement restoration a condition of any Certificate extension.
- Although ACP has cancelled its project, it has stated publicly that it has no plans to release the easements voluntarily. This kind of land grab is unacceptable.
- FERC granted eminent domain specifically for the ACP project. With the project’s cancellation, the basis for the original taking is gone. It is up to FERC, therefore, to ensure that ACP releases the easements.
- While easement release may need to be delayed until after full restoration on properties that suffered tree-felling or other damages, there is *no justification for delaying easement release on undamaged properties*.

All court-seized property should be returned

- Now that the pipeline has been cancelled, easements obtained through eminent domain must be returned to landowners.

Easements “negotiated” directly with the landowner were done so under coercive circumstances and must also be released now that the project is cancelled

- A “negotiated” easement contract does not mean that landowners voluntarily relinquished their land rights.
- Once FERC granted ACP the power of eminent domain, the company was essentially guaranteed it would get the easement regardless of the landowner’s wishes.
- ACP negotiated easements with landowners while holding over them the threat of eminent domain. In other words, the landowners knew that if they did not sign, they would lose their land rights anyway. Negotiations undertaken in such a circumstance are coercive and imbalanced.

- Landowners knew that going to court would not change the ultimate outcome of ACP getting an easement on their land.
- Signing easements was the only way that landowners could avoid the substantial costs of going to court (where they would have no guarantee of obtaining a higher monetary settlement anyway, and, would not be able to secure certain non-monetary concessions that might have been important to them.)
- Because FERC granted ACP the power of eminent domain, it is FERC's responsibility to ensure the company releases all easements that landowners request.

The easements represent an ongoing burden on the landowners

- Even though the pipeline will never be built, landowners will forever remain legally constrained from doing certain things (constructing buildings, moving earth, planting trees, etc.) on the Permanent Easement area.
- In the future, it may be extremely difficult for landowners to petition the easement holder for an exception to those restrictions. With the pipeline's cancellation, there is no guarantee that ACP LLC will still even exist and most easements do not provide assurances that the landowner will even be notified if the easement is transferred to another party.
- The presence of a "zombie easement" living on after the ACP project was cancelled creates an encumbrance on the title that may make it more difficult for landowners to sell or develop their land in the future.
- Because the Temporary Easement's duration was tied to either the start of construction or the in-service date of the pipeline, what was supposed to be a time-limited claim to the land has now become time-unlimited.
- The easements present a burden to the landowners' peace of mind (or their ability to sell) because of fear that different project may be proposed on their land in the future.

Releasing the Easements will cause no financial harm to ACP

- Filing simple easement releases in the jurisdictions where the original easements were recorded can be done at an insignificant cost, especially if ACP "scales up" the process to release all the easements in a short time frame.
- Based on publicly-filed financial documents, the cost of the project appears to have already been written off by Dominion and Duke, so ACP's owners will not suffer financially from walking away from assets they have apparently already taken off their books.