



*Preserving America's Heritage*

April 6, 2017

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

Re: Atlantic Coast Pipeline  
Comments on Draft Environmental Impact Statement  
Docket No. CP15-554-000 and CP15-554-001

Dear Mr. Davis,

The Advisory Council on Historic Preservation (ACHP) has reviewed the Draft Environmental Impact Statement (DEIS) prepared by Federal Energy Regulatory Commission (FERC) as part of its review of the application by Atlantic Coast Pipeline, LLC (ACP) and Dominion Transmission, Inc. (DTI) to construct and operate interstate natural gas facilities in West Virginia, Virginia, and North Carolina. We are providing the following comments on the DEIS in order to assist FERC in complying with the requirements of Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. part 800). Further, we believe our comments will assist with FERC's coordination of Section 106 and its compliance with the National Environmental Policy Act (NEPA) review.

The ACHP has received numerous expressions of concern from stakeholders regarding FERC's compliance with Section 106 for the referenced undertaking. In response, on December 14, 2016, the ACHP formally entered into the Section 106 consultation to assist FERC, the project proponent, consulting parties, and the public in reviewing the issues communicated to us. The central issue is FERC's apparent failure to identify and to include appropriate consulting parties in the Section 106 review. Stakeholders also expressed concerns about the sufficiency of the effort to identify historic properties that may be affected by the undertaking. Therefore, the ACHP thinks it appropriate to comment on the concerns expressed and provide recommendations to FERC that it should take into account. In addition, FERC should consider our comments in revising its characterization of the status of the Section 106 review as presented in the (DEIS).

Members of communities along the Right-of-Way (ROW) for the undertaking have contacted us with concerns that FERC has failed to identify and to invite appropriate stakeholders to be consulting parties, and has systematically denied requests for consulting party status from stakeholders that meet the requirements of the Section 106 regulations. Likewise, they have shared complaints about the inadequacy of the effort to identify historic properties that may be affected by the undertaking. They believe that the undertaking has been revised since the initiation of the Section 106 review but the Area of Potential Effects (APE) and the scope of the identification effort for historic properties remain the same. The consulting parties have indicated that FERC and the consultants for the project proponents have not been responsive to information shared about the presence of, and potential effects to, additional properties in

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the APE. Such historic properties include potential historic districts, cultural landscapes, and traditional cultural properties that may be eligible for inclusion in the National Register of Historic Places.

It is regrettable that FERC appears to have failed to engage in active and good faith consultation with stakeholders in general, and consulting parties in particular. This includes representatives of the communities affected by the undertaking who are recognized consulting parties in accordance with 36 C.F.R. §800.2(c) and § 800.3(f)). The inclusion of stakeholders in the formal Section 106 review as consulting parties is foundational to the Section 106 review process because it enables local governments, preservation organizations, and other representatives of communities located along the APE to formally participate in the federal decision making process. The information that they may share regarding the presence of historic properties in the APE; the nature of the significance of those properties to the communities; concerns about how the undertaking may affect such properties; and appropriate ways to resolve adverse effects are critical to the Section 106 review.

In FERC letters denying stakeholder requests to be consulting parties in Section 106 and also in Section 4.10.3 of the DEIS, FERC has suggested that the ACHP advises a federal agency may use its existing procedures for coordinating with the public ‘to fulfill its consultation requirements.’ This statement misrepresents the Section 106 regulations and the ACHP’s guidance regarding inclusion of the public in the Section 106 review. The Section 106 regulations state that the federal agency should seek and consider the views of the public which are essential to informed Federal decision making in the Section 106 process (35 C.F.R. § 800.2(d)(1)). The regulations also suggest that a federal agency may use its established procedures for public involvement under NEPA or other program requirements if they provide adequate opportunities for public involvement consistent with 36 C.F.R. § 800.3 through § 800.6. However, this principle does not absolve the federal agency’s responsibility to identify and formally recognize appropriate consulting parties to participate throughout the Section 106 review process.

Please note that the Section 106 regulations specify that certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties (36 C.F.R. § 800.2(c)(5)). Further, the regulations require the agency to consider all written requests of individuals and organizations to participate as consulting parties in consultation with the State Historic Preservation Officer(s) (SHPOs) or Tribal Historic Preservation Officer(s) (THPOs) and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties. This process enables the federal agency to determine which parties should be recognized as consulting parties (36 C.F.R. § 800.3(f)(3)).

Consultation is defined in our regulations as a “. . . process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process” (36 C.F.R. § 800.16(f)). Section 106 consultation is not accomplished by FERC’s procedures for public involvement. As reported to us, the range of stakeholders who have been denied consulting party status includes local governments (who are by-right consulting parties who can’t be refused (36 C.F.R § 800.2(c)(3)), statewide and local historical societies and preservation organizations, property owners affected by the undertaking, stakeholders who are formal intervenors in the FERC review, and other stakeholders with concerns about the effects of the undertaking.

As indicated in the DEIS, FERC is currently in the process of completing the identification effort, step 2 of the 4-step Section 106 review process. The ACHP recommends that FERC should immediately revisit the requests by stakeholders to be consulting parties, and as appropriate, formally invite them into the consultation. Further, FERC should provide the consulting parties with information about the scope, status, and results of the identification effort, and acknowledge and address the concerns that have been expressed to date. We are concerned that in light of the views expressed by the stakeholders, the summary

of the Section 106 review that FERC has characterized in the DEIS is inaccurate. Therefore, we encourage FERC to immediately identify and recognize appropriate consulting parties so as to avoid compromising the adequacy of FERC's Section 106 consultation for this undertaking.

We concur with the comments on the DEIS provided to FERC by the NTHP by letter of April 6, 2017, and by the Virginia State Historic Preservation Officer (SHPO) by a letter of April 5, 2017. The SHPO notes that the project crosses at least three (3) NRHP-listed or -eligible historic districts and five Civil War battlefields in Virginia. Accordingly, FERC should consider the SHPO's comments on the methodology that the proponent should employ in considering the importance of, and relationship between, the historic built environment and the rural or agricultural settings to the significance of the historic districts. The SHPO also recommends that FERC should consider effects to contributing properties and significant observation points within the districts that reflect the historic landscape and how residents and visitors experience that landscape. Finally, the SHPO notes that a similar approach should be taken to battlefields and possibly include concepts of military terrain analysis, such as KOCOAA. We would note that many stakeholders have made similar observations and recommendations.

The ACHP looks forward to assisting FERC, the SHPOs, consulting parties, including the applicant, and the public in moving forward in the Section 106 review for this undertaking. Should you have any questions or wish to discuss this matter further, please contact John T. Eddins, PhD at 202-517-0211, or by e-mail at [jeddins@achp.gov](mailto:jeddins@achp.gov).

Sincerely,

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