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## **Atlantic Coast Pipeline committee will examine timing of MOU, permit**

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Did state approval of the North Carolina segment of the 600-mile Atlantic Coast Pipeline depend on Gov. Roy Cooper's administration securing a \$57.8-million discretionary "mitigation fund" with the pipeline operators?

Documents obtained by *Carolina Journal* suggest it did.

The federal government approved the pipeline in October 2017, but the state did not sign off on a critical water quality permit until the end of January 2018. During that time, state Department of Environmental Quality staff seemed ready to issue a critical 401 Water Quality Permit to move the project forward. But as staff prepared documents to OK the permit, separate documents denying the permit and rejecting the project had been drafted.

A special legislative committee investigating all aspects of the pipeline and the mitigation fund will meet Wednesday. Republicans say the fund appears to be part of a "pay to play" scheme because it is tied to the environmental permit ACP was trying to obtain from the governor's administration.

One issue the committee will explore is the reason for the draft permit denial letters found in the DEQ's ACP project file. Those letters were prepared in January. The 401 permit was announced a day after a memorandum of understanding was signed between the governor and utility companies building the pipeline. The MOU gives Cooper control of the \$57.8 million fund.

The ACP is an underground natural gas transmission pipeline originating in West Virginia, traveling through Virginia, and terminating in Robeson County. The project is a partnership among Richmond, Virginia-based Dominion Energy; Duke Energy; Piedmont Natural Gas; and Southern Company Gas. Gas from the ACP will supplement existing gas resources and fuel new electricity generation plants.

Cooper's Chief of Staff Kristi Jones has told legislators the "mitigation fund was established independently of the DEQ permitting process." Republicans have sought answers from Cooper about the arrangement, but they haven't been satisfied with the administration's responses.

During December 2017, Cooper's general counsel William McKinney and senior adviser Ken Eudy were quietly negotiating with the ACP for a discretionary fund ACP would pay to the governor. McKinney and ACP Vice President Leslie Hartz signed the final agreement titled "Mitigation Project Memorandum of Understanding" on Jan. 25. To date, there had been no media reports about the MOU. The following day, DEQ announced it had issued the 401 permit to ACP's Hartz — the same executive who signed the MOU. Cooper's office announced the MOU immediately after DEQ announced it had granted the permit to ACP.

## **Approve? Deny?**

In a draft document produced on Oct 11, 2017, DEQ hearing officer Brian Wrenn recommended approving the water quality permit. Revised reports were entered into the DEQ document system Jan. 4, 5, 16, and 19. The final version

was issued Jan. 22. In every version Wrenn concluded, "It is my recommendation that the 401 Water Quality Certification and Buffer Authorization Certificates be issued. ..."

Identical draft letters denying the permit were addressed to ACP's Hartz and entered into the project document files Jan. 1 and 22.

The subject line stated: "Denial of 401 Water Quality Certification and Tar-Pamlico/Neuse Riparian Buffer Authorization Certificates." The letters were drafted for the signature of Division of Water Resources Director Linda Culpepper. A space to cite the rule justifying the denial and an explanation were blank.

### **Legislative oversight**

The special legislative committee was created after an August presentation by Sen. Paul Newton, R-Cabarrus, to the Joint Legislative Commission on Governmental Operations, that led to creation of the special committee.

At the time Newton, a former president of Duke Energy North Carolina, said a special committee was needed for seven reasons: The timing of the permit and the MOU; a lack of transparency by the Cooper administration; conflicting reasons for the MOU payment; the governor's control of the fund; the frequency of DEQ requests for additional information from ACP; anomalies in the permit file; and the protection of the state's business climate.

Newton told *CJ* the committee will address the draft denial letters. "It is one of the items we expect to focus on," he said. He also reiterated the purpose of the committee's work. "Our goal is not to embarrass the current administration, it is to get answers. We owe it to the public," he said.

DEQ spokeswoman Megan Thorpe told *CJ* that DEQ has prepared draft denial letters for other projects but offered just one example involving the Alcoa

Yadkin River Project. *CJ* was unable to find other examples.

*CJ* sent the draft denial letter to ACP spokesman Aaron Ruby and asked if he or anyone from ACP negotiating the MOU had seen it. "No one from ACP, Dominion, or Duke has seen this letter until you sent it to me," he said.

## **Evolution of the MOU**

ACP prepared the first version of the MOU in mid-December. The payment to the state was contingent on the project receiving the necessary permits. The agreement focused on wildlife habitat and it was designed to be signed by the ACP and by the Director of the North Carolina Wildlife Resources Commission, representing the state.

Cooper's office made several changes and prepared a second version between the "State of North Carolina by and through the Office of the Governor," to be signed by the governor's legal counsel. The funds would be used for mitigating all damage caused by the pipeline, economic development opportunities, and developing renewable energy projects.

For the final version, Cooper's team made additional changes making the agreement between "Roy Cooper, Governor of North Carolina, in his official capacity," and ACP.

That version made it clear Cooper would be in charge of spending this new revenue. "Whereas, the Governor, through his agents and assigns, including but not limited to the Department of Environmental Quality, Department of Commerce, Wildlife Resources Commission and their respective leaders, has the authority to direct the disbursement of funds contemplated in this Memorandum of Understanding," the signed document stated.

The final version also said if the ACP failed to receive necessary permits or

terminates the project, the governor would refund a prorated portion of the \$57.8 million to ACP.

After the fund was announced, Republican leaders said the deal was illegal. The constitution gives the legislative branch the sole power to collect and appropriate money. In February, they voted to direct the \$57.8 million to the school systems in the eight counties along the ACP route. ACP construction is under way, but no ACP funds have been sent to North Carolina.

## **Committee members**

Speaker Tim Moore appointed Rep. Dean Arp, R-Union, co-chair; Rep. John Torbett, R-Gaston; Rep. Pat McElraft, R-Carteret; Rep. Becky Carney, D-Mecklenburg; Rep. Ken Goodman, D-Richmond; and Rep. Jon Hardister, R-Guilford.

Sen. Phil Berger, R-Rockingham, appointed Senate Majority Leader Harry Brown, R-Onslow, co-chairman; Sens. Kathy Harrington, R-Gaston; Joyce Krawiec, R-Forsyth; Ben Clark, D-Hoke; Floyd McKissick, D-Durham; and Paul Newton, R-Cabarrus.

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