

*Office of the Governor
State of North Carolina*

*Roy Cooper
Governor*



*20301 Mail Service Center
Raleigh, N.C. 27699-0301*

February 15, 2018

The Honorable Bill Rabon
The Honorable David Lewis
North Carolina General Assembly
16 W. Jones Street
Raleigh, NC 27601

Gentlemen:

I write to respond on behalf of the Office of the Governor to your questions about the Atlantic Coast Pipeline and Memorandum of Understanding regarding a mitigation fund and to express our office's concern that the General Assembly's actions have imperiled an agreement intended to support local economic development and environmental protection in eastern North Carolina.

As you know, the ACP agreed to provide funds to support economic development and additional environmental protection in the eight counties where the pipeline is being constructed. Specifically, these funds were intended to provide a public benefit by expanding access to the pipeline while mitigating the adverse environmental effects created by the pipeline.

As the MOU stated, an executive order would establish the fund and lay out the structure, process and rules for administering the fund. Before the fund could be established, however, the General Assembly chose to reallocate prospective funds to purposes outside those agreed to in the MOU.

As a result, it is unclear if North Carolina will receive these funds, denying businesses and farms in eastern North Carolina access to natural gas and much needed economic development.

Upon our office's receipt of your letter dated Feb. 12, 2018, I decided to respond on behalf of the office to provide you information leading up to the signing of the MOU.

Now, I will address the way the fund was established. In the Governor's office, discussions about the fund began in 2017, when eastern North Carolina economic developers and others expressed concerns about whether the pipeline would bring the economic growth it promised.

The Governor, his administration and many others were concerned about whether the pipeline would deliver on its promises of economic development to eastern North Carolina. Those promises of jobs and industry, which had been touted in television advertising and other media, had earned support for the project from local governments, economic developers and many of your caucus members.

Similarly, the administration was concerned about the environmental impacts of the pipeline on eastern North Carolina.

The Governor's Office, including Legal Counsel William McKinney and Senior Advisor Ken Eudy, worked with the ACP partners to establish the fund to lessen the impact and create jobs in the counties affected by the project.

The MOU, signed by a representative of the ACP and Mr. McKinney, was the first step in the fund's existence. The MOU identified the purposes for which the funding should be directed and the commitment to these purposes by both parties. As the MOU spells out, an Executive Order would be issued to direct the establishment of the fund and how it would operate.

At the time that you chose to intervene, the Governor's office was working to finalize the process that would be utilized to effectuate the MOU. Our expectations and plans have been that decisions about the distribution of the fund were to be made after a review of applications from qualified government entities and non-profits.

The Rural Infrastructure Authority and the Clean Water Management Trust Fund are examples of two grant-makers operating under these guidelines that could fulfill the administrative process and accomplish the goals. The executive order setting up the fund would direct that it operate subject to the state's Public Records and Open Meetings laws, the State Ethics Act and additional provisions preventing conflict of interest or duplication of efforts.

We anticipated the designation of subject matter experts who would serve as trustees or directors. Never was the Governor contemplated to be the decision maker as to which projects would be funded.

It is important to note that the state does not have the money, nor has the fund been established. The MOU states that the first half of the money would not come in until final FERC approval of the ACP and the second half would come in once the pipeline is completed. It is possible that the legislature's action in House Bill 90 diverting the anticipated funds will imperil the agreement.

Eliminating funding for job creation and environmental protection in the pipeline's path undoes the fund's purpose. The fund was intended to bring jobs to communities and lessen the environmental impact for those most affected.

As to whether shareholders or ratepayers would cover the cost of the fund, that is a decision for the utilities developing the pipeline.

This pipeline meets an energy need for our state and moves us away from coal-fired power plants. It would be preferable if North Carolina could move immediately to electricity produced 100% by renewable sources, but the state and country aren't there yet. Getting to no-carbon electricity will take years to achieve, after battery storage becomes more affordable and the electric grid is upgraded. Meantime, the state can't risk jobs and the economy by failing to have an adequate supply of reliable electricity.

The mitigation fund was established independently of the DEQ permitting process, which is still underway. The state DEQ continues to conduct a rigorous analysis. At the end of its water permit review, DEQ had exhausted its inquiries and addressed mitigation concerns allowed by law, and thus issued the water permit. You can be sure that DEQ will continue in its role as a regulator to make sure that ACP construction and operation complies with the permit's mitigation requirements.

The DEQ also will hold the pipeline accountable for complying with the permit requirements and environmental protection rules. Separately, the mitigation fund would provide additional resources to help offset the impact of the pipeline as well as to provide investments in renewable energy and economic development in the counties along the pipeline. Extending gas lines is an expensive process and the fund could help offset some of it.

The ACP permitting process was extraordinarily thorough. It was important for DEQ to make its permit decision based solely on whether the ACP met regulatory requirements. There is substantial mitigation required within the 401 water permit. However, the administration also wanted to help make sure that the natural gas that the ACP touted in its advertising could be extended to create jobs in the eight pipeline counties.

Clearly the fund's goals are tailored to North Carolina, and so is the impact and promise of the pipeline construction project. No similar discussions regarding other construction projects have occurred in North Carolina, nor has a project of this scope been proposed.

Finally, it is the administration's belief that a project of this magnitude should serve to bring economic growth to rural areas of our state.

In closing, you should understand that Governor Cooper will continue to use all of the power and authority inherent in his office to try and improve the lives of North Carolinians. Creating jobs and protecting our environment are among the most important responsibilities assigned to a Governor and, indeed, all of state government.

While this General Assembly may be willing to put power, partisanship and politics before the needs of the people of North Carolina, Governor Cooper will continue to fight for them each and every day. It is what the people of North Carolina elected him to do.

Sincerely,

A handwritten signature in black ink that reads "Kristi Jones". The signature is written in a cursive, flowing style.

Kristi Jones
Chief of Staff