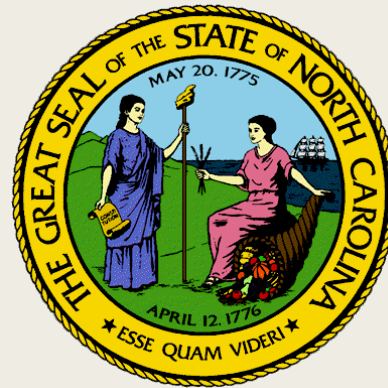


Atlantic Coast Pipeline: Permit Process and MOU Payments



Presented to the Joint Legislative Commission on Governmental Affairs,
Subcommittee on the Atlantic Coast Pipeline

November 14, 2018

Purposes of Committee Review

- Assuring the public:
 - *Of the integrity of the state environmental permitting process;*
 - *That business and industry can continue to locate and expand in our state without concern of being subjected to payments of monies not prescribed by law or coercion of any type.*

- If there have been improprieties, make policy recommendations to preclude them from happening again.

Notable Quotes

- "The permits are not connected to that MOU."
—Assistant Secretary Sheila Holman, Department of Environmental Quality [WRA](#)
- "...the permit, the 401 water permit is both separate and apart from the mitigation fund."
—Director of Legislative Affairs Lee Lilley, Governor's Office (February 8, 2018 Testimony)
- "I think that their subsequent actions [the General Assembly's passage of H.B. 90] bore out why we didn't want to involve the legislature,"
—Senior Advisor Ken Eudy, Governor's Office [WRA](#)
- "In hindsight, we should have had more structure in the process. Clearly, we were going to put that structure in place when the fund arrived..."
—Governor Roy Cooper [WRA](#)
- "Eudy said last week that the administration team 'had it in our heads' how the fund would actually work. But officials didn't put the board of experts, or other details, in writing."
—Travis Fain [WRA](#) Statehouse Reporter [WRA](#)

Background Information

- Memorandums of Understanding and Memorandums of Agreement are enforceable when other necessary elements of a contract are in place
- Understandings are generally **not** enforceable
- Gifts are **not** legally enforceable
- Funds and grants **are** legally enforceable when other necessary elements of a contract are in place

Virginia's Memorandum of Agreement

- The Virginia Secretary of Natural Resources has the authority:
 - *Va. Code 10:1104(A)(B) “to accept bequests and gifts of real and personal property as well as endowments, funds, and grants from the United State government, its agencies and instrumentalities, and any other source.” (Department of Conservation and Recreation)*
 - *Va. Code 10:1107(A) “...accept for state forest purposes gifts, devises and bequests of real and personal property as well as endowments, funds, and grants from any other source.” (Department of Forestry)*

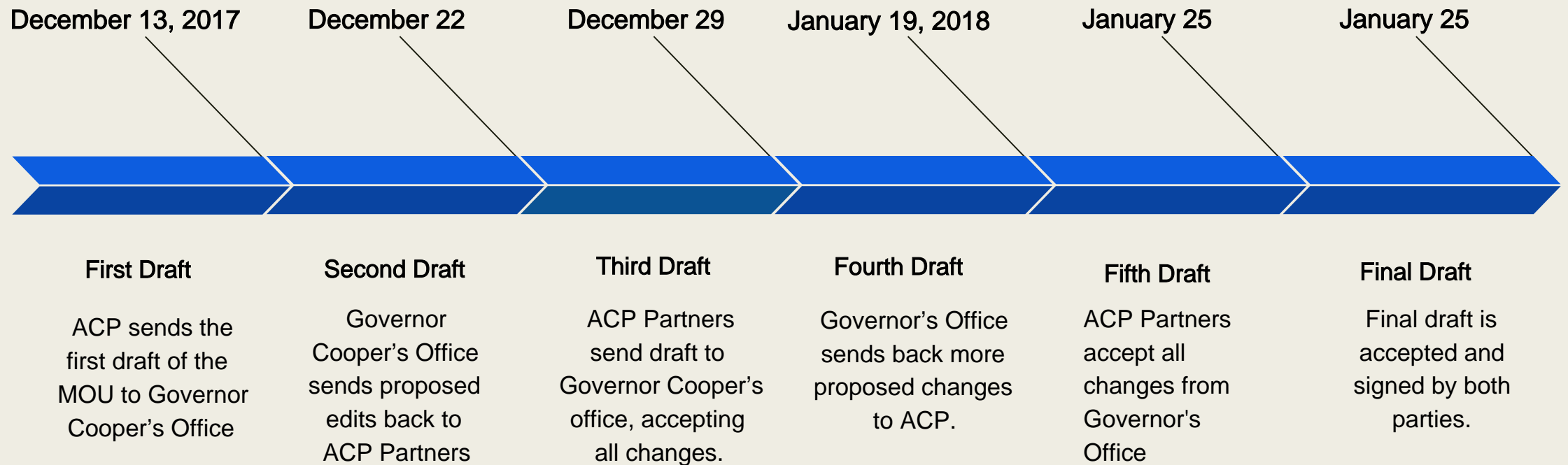
- ACP Partners and VA signed an MOA citing the above authority providing the following:
 - *\$38.65M to two nonprofits and one NGO for forest conservation*
 - *\$19.2M to two nonprofits and the USGS for water quality*

North Carolina Statutory Authorities

- North Carolina can require compensatory mitigation for impacts to:
 - Waters of the US
 - Waters of the State
 - Streams
 - Riparian buffers
 - Wetlands

- North Carolina agencies comparable to Virginia agencies that can receive gifts, grants, funds, etc.
 - Department of Environmental Quality
 - Department of Natural and Cultural Resources
 - Wildlife Resources Commission
 - Department of Agriculture and Consumer Services
 - Department of Administration

Memorandum of Understanding Timeline



December 13 First Draft: ACP to Governor

CONFIDENTIAL

MITIGATION PROJECT AGREEMENT

THIS MITIGATION PROJECT AGREEMENT ("Agreement") is made and entered into this ___ day of December, 2017, by and between the STATE OF NORTH CAROLINA and ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company of 120 Tredegar Street, Richmond, Virginia 23219 ("Atlantic").

Looking in

WITNESSETH:

WHEREAS, Atlantic is proposing to construct the Atlantic Coast Pipeline ("ACP"), an underground natural gas transmission pipeline of approximately 600 miles from West Virginia, through Virginia into North Carolina; and

WHEREAS, the ACP will deliver up to 1.5 billion cubic feet per day of natural gas to meet the demand for electric generation, natural gas distribution, and end use markets in North Carolina and Virginia; and

WHEREAS, the ACP route was approved by the Federal Energy Regulatory Commission ("FERC") on October 13, 2017 and will traverse eight counties in the State of North Carolina and will include a natural gas compressor station in Northampton County and other related facilities along the route; and

WHEREAS, the pipeline, access roads, and all associated aboveground facilities and contractor yards will result in total direct impacts of over 3,000 acres from construction activities and a significantly reduced impact during operation; and

WHEREAS, while the ACP has been routed to minimize disruptions to migratory birds and federally listed species by avoiding preferred habitat, including wetland areas, waterbodies and associated riparian vegetation to the extent practicable, there remain unavoidable impacts to over 300 acres of interior forest habitat; and

WHEREAS, the ACP route and access roads would cross approximately 320 waterbodies in North Carolina; and

WHEREAS, Atlantic has conducted numerous open houses, participated in many public meetings held by FERC and the North Carolina Department of Environmental Quality, and held individual information sessions with local governments, state-recognized Indian tribes, and other stakeholders along the route; and

WHEREAS, Atlantic recognizes that construction of the ACP and maintenance of the permanent right-of-way for the ACP may result in temporary and/or permanent impacts to the habitats upon which interior forest wildlife species depend; and

WHEREAS, Atlantic desires to take all reasonable measures to comply with North Carolina natural resources laws and to provide for the restoration and preservation of habitats for

Whereas, industrial level communities, already.

Page 1 of 2

10-1 - ST believe tribes have a significant interest in preserving their traditional lifestyle, and quality of life.

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interior forest wildlife in North Carolina where the ACP will be constructed, operated, and maintained; and

WHEREAS, the Director of the North Carolina Wildlife Resources Commission has authority and responsibility under NCGS Section 113-306(a) to act in the overall best interests of the conservation of wildlife resources to accept gifts and grants on behalf of the State;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the State of North Carolina and Atlantic (together, the "Parties") agree as follows:

- Atlantic agrees to provide mitigation funding in the amount of \$55,000,000 to the State of North Carolina no later than before the date the ACP is placed in-service. Such funding is being provided as required mitigation for the unavoidable effects of the ACP on interior forest habitat, open-space lands; waterbodies; and natural resources of the communities along the ACP's route.
- The State of North Carolina acknowledges that the mitigation funding sufficiently addresses the effects on the landscape, natural resources, interior forest habitat, agricultural lands and lifestyles of the communities caused by the pipeline, access roads and all associated aboveground facilities and contractor yards as described in the FERC Environmental Impact Statement and any changes thereto subsequently approved by FERC. The funding provided shall be allocated at the State's discretion to mitigate these effects by supporting programs and projects that enhance the well-being of the affected areas and resources.
- Nothing in this Agreement shall be construed as affecting the authorities of any party or as binding them beyond their respective authorities or responsibilities.
- The Agreement does not create any right of action for a third party and may not be the basis of any third party challenges or appeals. *This agreement does not provide unless SP claim regarding the pipeline Atlantic's responsibility of the Director*

STATE OF NORTH CAROLINA

ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

SP Trustee

Page 2 of 2

Whereas, the ACP route was approved by the Federal Energy Regulatory Commission ("FERC") on October 13, 2017 and will traverse eight counties in the State of North Carolina and will include a natural gas compressor station in Northampton County and other related facilities along the route; and

WHEREAS, the pipeline, access roads, and all associated aboveground facilities and contractor yards will result in total direct impacts of over 3,000 acres from construction activities and a significantly reduced impact during operation; and

WHEREAS, while the ACP has been routed to minimize disruptions to migratory birds and federally listed species by avoiding preferred habitat, including wetland areas, waterbodies and associated riparian vegetation to the extent practicable, there remain unavoidable impacts to over 300 acres of interior forest habitat; and

WHEREAS, the ACP route and access roads would cross approximately 320 waterbodies in North Carolina; and

WHEREAS, Atlantic has conducted numerous open houses, participated in many public meetings held by FERC and the North Carolina Department of Environmental Quality, and held individual information sessions with local governments, state-recognized Indian tribes, and other stakeholders along the route; and

set up Trust Fund

Misc. in Review

on the date of the Agreement

Approval of final permit by permittee

Complete by permittee

See account & summary

First Draft Overview

- Partners propose a binding agreement
- Intent appears to be, with the exception of "waterbodies," to address impacts identified in FERCEIS for which NC does not require compensatory mitigation
- Funds administered through Wildlife Resources Commission
- Agreement between ACP partners and State of North Carolina
- Funds to be paid before pipeline goes into service for stated environmental purposes
- Presumes traditional stewardship of state dollars through Treasury
- Funding level proposed at \$55M

December 22 Second Draft: Governor's Office to ACP Partners

NOW, THEREFORE, the State of North Carolina and Atlantic (together, the "Parties") endeavor to do the following:

- 1) Atlantic commits to providing funding in the amount of \$55,000,000 to the State of North Carolina as set forth below. The funds will be deposited in an escrow account designated by a third party selected by the Governor of the State of North Carolina ("the Escrow Account"). The funds are being provided as (i) mitigation for the unavoidable effects of the ACP on the interior forest habitat, open-space lands, waterbodies, and natural resources of the communities along the ACP's route (ii) support and funding for economic development in the counties that would be impacted by the ACP; and (iii) extension of renewable energy projects into certain local communities which may stand to be effected by the ACP's operation. Fifty per cent of the \$55,000,000 will be deposited in the Escrow Account and made available for disbursement for environmental mitigation immediately following the issuance by the Federal Energy Regulatory Commission of a Final Notice to Proceed for the ACP. The remaining balance of funds shall be deposited in the Escrow Account no later than upon the date the ACP is placed into service. In the event that Atlantic terminates the project before it is placed into service, whether in the unanticipated event that the project fails to obtain and maintain the state approvals or any other necessary permits, certifications, consents, authorizations, and other approvals or for any other reason in Atlantic's sole discretion, the State of North Carolina shall deliver the proportionate share of the mitigation funds as preserved in accordance with this paragraph to Atlantic within thirty (30) days of receipt of written notice of termination from Atlantic. Such proportionate share to be returned to Atlantic shall be calculated based upon the number of miles of the pipeline route in North Carolina for which tree clearing and grubbing

PRIVILEGED AND CONFIDENTIAL

MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING

THIS MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING ("Memorandum") is made and entered into this ____ day of December, 2017, by and between the STATE OF NORTH CAROLINA BY AND THROUGH THE OFFICE OF THE GOVERNOR and ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company of 120 Tredegar Street, Richmond, Virginia 23219 ("Atlantic").

WITNESSETH:

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activity remains to be performed compared to the total number of miles of the pipeline route requiring such activities in North Carolina as part of the project.

- 2) The State of North Carolina acknowledges that the funds are being provided for the purpose of (i) addressing the effects on the landscape, natural resources, interior forest habitat, agricultural lands and lifestyles of the communities caused by ACP, access roads and all associated aboveground facilities and contractor yards as described in the FERC Environmental Impact Statement; and (ii) expanding economic development opportunities and (iii) developing renewable energy projects in and around the ACP's route. The funds shall be allocated pursuant to the guidelines and directives set forth in a subsequent Executive Order that would be issued prior to the completion of state permitting for the ACP. Nothing in this Memorandum shall be construed as precluding or otherwise barring the State of North Carolina from recovering damages or equitable remedies from Atlantic for spills or leaks stemming from the ACP.

Second Draft Overview

- Governor's Office changed "Memorandum of Agreement" to "Memorandum of Understanding"
- The agreement would be with "the state of North Carolina by and through the office of the governor" rather than just with the state
- Amended language stipulates half of the \$55M would be paid as soon as the Federal Energy Regulatory Commission issued a final notice to proceed on the project; the other half would be due no later than when the pipeline goes into service
- The money would still go "to the state of North Carolina," but the Governor's Office added language allowing him to designate an account outside the state treasurer to hold the money
- New language describes forthcoming executive order directing disbursement of funds that would be issued prior to the decision on approval/denial of permits
- General Counsel McKinney's name was added at the bottom of the memo, making it clear that he would sign off on the agreement for the state

December 29 Third Draft: ACP Partners to Governor's Office

PRIVILEGED AND CONFIDENTIAL

MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING

THIS MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING ("Memorandum") is made and entered into this _____ day of December, 2017, by and between the STATE OF NORTH CAROLINA BY AND THROUGH THE OFFICE OF THE GOVERNOR and ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company of 120 Tredegar Street, Richmond, Virginia 23219 ("Atlantic").

WITNESSETH:

WHEREAS, Atlantic is proposing to construct the Atlantic Coast Pipeline ("ACP"), an underground natural gas transmission pipeline of approximately 600 miles from West Virginia, through Virginia, and ending in North Carolina; and

WHEREAS, the ACP will deliver up to 1.5 billion cubic feet per day of natural gas to meet the demand for electricity, natural gas distribution, and end use markets in North Carolina and Virginia; and

WHEREAS, the ACP will serve as a catalyst for economic development and job creation in North Carolina; and

WHEREAS, the ACP will promote and facilitate the recruitment of new industries to North Carolina; and

WHEREAS, the pipeline will generate approximately \$60,000,000 in local property tax revenue between 2018 and 2025; and

WHEREAS, the Federal Energy Regulatory Commission ("FERC") approved the ACP route on October 13, 2017, traversing eight counties in the State of North Carolina, and including a natural gas compressor station in Northampton County and other related facilities; and

WHEREAS, the ACP, access roads, and all associated aboveground facilities and contractor yards will result in total direct impacts of over 3,000 acres during construction and significantly reduced impacts during operation; and

WHEREAS, while the ACP has been sited to minimize disruptions to migratory birds and federally listed species by avoiding preferred habitats, including wetland areas, waterbodies and associated riparian vegetation to the fullest extent practicable, there remain unavoidable impacts to over 300 acres of interior forest habitats; and

WHEREAS, the ACP and access roads would cross approximately 320 waterbodies in North Carolina; and

WHEREAS, Atlantic has conducted open houses, participated in public meetings held by FERC and the North Carolina Department of Environmental Quality, and held individual

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information sessions with local governments, state-recognized Indian tribes, and other stakeholders along the route; and

WHEREAS, Atlantic recognizes that construction of the ACP and maintenance of the permanent right-of-way for the ACP may result in temporary and/or permanent impacts to the habitats upon which interior forest wildlife species depend; and

WHEREAS, Atlantic acknowledges that local communities, existing populations, and state-recognized Indian tribes have a significant interest in preserving their traditions, lifestyles, and quality of life; and

WHEREAS, Atlantic represents that it has taken and will take all reasonable measures to comply with North Carolina natural resources laws and to provide for the restoration and preservation of North Carolina interior forest wildlife habitats where the ACP will be constructed, operated, and maintained; and

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;

NOW, THEREFORE, the State of North Carolina and Atlantic (together, the "Parties") endeavor to do the following:

- 1) Atlantic commits to providing funding in the amount of \$55,000,000 to the State of North Carolina as set forth below. The funds will be deposited in an escrow account designated by a third party selected by the Governor of the State of North Carolina ("the Escrow Account"). The funds are being provided as (i) mitigation for the unavoidable effects of the ACP on the interior forest habitat, open-space lands, waterbodies, and natural resources of the communities along the ACP's route (ii) support and funding for economic development in the counties that would be impacted by the ACP, and (iii) extension of renewable energy projects into certain local communities which may stand to be affected by the ACP's operation. Fifty per cent of the \$55,000,000 will be deposited in the Escrow Account and made available for disbursement for environmental mitigation immediately following the issuance by the Federal Energy Regulatory Commission of a Final Notice to Proceed for the ACP. The remaining balance of funds shall be deposited in the Escrow Account no later than upon the date the ACP is placed into service. In the event that Atlantic terminates the project before it is placed into service, whether in the unanticipated event that the project fails to obtain and maintain the state approvals or any other necessary permits, certifications, consents, authorizations, and other approvals or for any other reason in Atlantic's sole discretion, the State of North Carolina shall deliver the proportionate share of the mitigation funds as preserved in accordance with this paragraph to Atlantic within thirty (30) days of receipt of written notice of termination from Atlantic. Such proportionate share to be returned to Atlantic shall be calculated based upon the number of miles of the pipeline route in North Carolina for which tree clearing and grubbing

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PRIVILEGED AND CONFIDENTIAL

activity remains to be performed compared to the total number of miles of the pipeline route requiring such activities in North Carolina as part of the project.

2) The State of North Carolina acknowledges that the funds are being provided for the purpose of (i) addressing the effects on the landscape, natural resources, interior forest habitat, agricultural lands and lifestyles of the communities served by ACP, access roads and all associated aboveground facilities and contractor yards as described in the FERC Environmental Impact Statement; and (ii) expanding economic development opportunities and (iii) developing renewable energy projects in and around the ACP's route. The funds shall be allocated pursuant to the guidelines and direction set forth in a subsequent Executive Order that would be issued prior to the completion of state permitting for the ACP. Nothing in this Memorandum shall be construed as precluding or otherwise limiting the State of North Carolina from recovering damages or equitable remedies from Atlantic for spills or leaks resulting from the ACP.

3) Nothing in this Memorandum shall be construed as affecting the authorities of any party or as binding them beyond their respective authorities or responsibilities.

4) The Memorandum does not create any right of action for a third party and may not be the basis of any third-party challenge or appeal. Nothing in this Memorandum shall be construed as precluding or otherwise limiting independent, third-party claims regarding the ACP.

5) Nothing in this Memorandum is deemed to constitute a "settlement" as that term is defined by N.C. Gen. Stat. § 114-2.6A, nor does it require the payment of penalties or forfeitures and there under N.C. Const., Art. IX § 7, L.Lawson, making in this Memorandum should be construed to be an admission of liability or wrongdoing by either Atlantic or the State of North Carolina its agents or assigns.

Signed:

William C. McKinstry
General Counsel, Office of the
North Carolina Governor

Date:

Signed:

Linda Harb
Vice President-Engineering &
Construction - Strategic Projects

Date: 12/29/17

3

January 19 Fourth Draft: Governor's Office to ACP

MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING

THIS MITIGATION PROJECT MEMORANDUM OF UNDERSTANDING ("Memorandum") is made and entered into this ___ day of January, 2018, by and between the STATE OF NORTH CAROLINA BY AND THROUGH THE OFFICE OF THE GOVERNOR and ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company of 120Tredegar Street, Richmond, Virginia 23219 ("Atlantic").

WITNESSETH:

WHEREAS, Atlantic is proposing to construct the Atlantic Coast Pipeline ("ACP"), an underground natural gas transmission pipeline of approximately 600 miles from West Virginia, through Virginia, and ending in North Carolina; and

WHEREAS, the ACP will deliver up to 5 billion cubic feet per day of natural gas to meet the demand for electricity, natural gas distribution, and end use markets in North Carolina and Virginia; and

WHEREAS, the ACP will serve as a catalyst for economic development and job creation in North Carolina; and

WHEREAS, the ACP will promote and facilitate the recruitment of new industries to North Carolina; and

WHEREAS, the pipeline will generate approximately \$60,000,000 in local property tax revenue between 2018 and 2025; and

WHEREAS, the Federal Energy Regulatory Commission ("FERC") approved the ACP route on October 13, 2017, traversing eight counties in the State of North Carolina, and including a natural gas compressor station in Northampton County and other related facilities; and

WHEREAS, the ACP, access roads, and all associated aboveground facilities and contractor yards will result in total direct impacts of over 3,000 acres during construction and significantly reduced impacts during operation; and

WHEREAS, while the ACP has been routed to minimize disruptions to migratory birds and federally listed species by avoiding preferred habitats, including wetland areas, waterbodies and associated riparian vegetation to the fullest extent practicable, there remain unavoidable impacts to over 300 acres of interior forest habitats; and

WHEREAS, the ACP and access roads would cross approximately 320 waterbodies in North Carolina; and

WHEREAS, Atlantic has conducted open houses, participated in public meetings

the state of the Governor's Office in his spirit capacity,

held by FERC and the North Carolina Department of Environmental Quality, and held individual information sessions with local governments, state-recognized Indian tribes, and other stakeholders along the route; and

WHEREAS, Atlantic recognizes that construction of the ACP and maintenance of the permanent right-of-way for the ACP may result in temporary and/or permanent impacts to the habitats upon which interior forest wildlife species depend; and

WHEREAS, Atlantic acknowledges that local communities, ~~existing~~ ^{existing} populations, and state-recognized Indian tribes have a significant interest in preserving their traditions, lifestyles, and quality of life; and

WHEREAS, Atlantic represents that it has taken and will take all reasonable measures to comply with North Carolina natural resources laws and to provide for the restoration and preservation of North Carolina interior forest wildlife habitats where the ACP will be constructed, operated, and maintained; and

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;

NOW, THEREFORE, the State of North Carolina and Atlantic (together, the "Parties") endeavor to do the following:

Atlantic commits to providing funding in the amount of \$57,800,000 to the State of North Carolina as set forth below. The funds will be deposited in an escrow account designated by a third party selected by the Governor of the State of North Carolina ("the Escrow Account"). The funds are being provided as (i) mitigation for the unavoidable effects of the ACP on the interior forest habitat, open-space lands, waterbodies, and natural resources of the communities along the ACP's route (ii) support and funding for economic development in the counties that would be impacted by the ACP; and (iii) extension of renewable energy projects into certain local communities which may stand to be affected by the ACP's operation. Fifty per cent of the \$57,800,000 will be deposited in the Escrow Account and made available for disbursement for environmental mitigation immediately following the issuance by the Federal Energy Regulatory Commission of a Final Notice to Proceed for the ACP. The remaining balance of funds shall be deposited in the Escrow Account no later than upon the date the ACP is placed into service. In the event that Atlantic terminates the project before it is placed into service, whether in the unanticipated event that the project fails to obtain and maintain the state approvals or any other necessary permits, certifications, consents, authorizations, and ~~other~~ ^{other} approvals or for any other reason in Atlantic's sole discretion, the State of North Carolina shall deliver the proportionate share of the mitigation funds as preserved in accordance with this paragraph to Atlantic within thirty (30) days of receipt of written notice of termination from Atlantic. Such proportionate share to be returned to Atlantic shall be calculated based upon the number of miles of the pipeline route in North Carolina for which tree clearing and grubbing

Governor

activity remains to be performed compared to the total number of miles of the pipeline route requiring such activities in North Carolina as part of the project.

- 2) The State of North Carolina acknowledges that the funds are being provided for the purpose of (i) addressing the effects on the landscape, natural resources, interior forest habitat, agricultural lands and lifestyles of the communities caused by ACP, access roads and all associated aboveground facilities and contractor yards as described in the FERC Environmental Impact Statement; and (ii) expanding economic development opportunities and (iii) developing renewable energy projects in and around the ACP's route. The funds shall be allocated pursuant to the guidelines and directives set forth in a subsequent Executive Order that would be issued prior to the completion of state permitting for the ACP. Nothing in this Memorandum shall be construed as precluding or otherwise barring the State of North Carolina from recovering damages or equitable remedies from Atlantic for spills or leaks stemming from the ACP.
- 3) Nothing in this Memorandum shall be construed as affecting the authorities of any party or as binding them beyond their respective authorities or responsibilities.
- 4) The Memorandum does not create any right of action for a third party and may not be the basis of any third-party challenges or appeals. Nothing in this Memorandum shall be construed as precluding or otherwise barring independent, third-party claims regarding the ACP.
- 5) Nothing in this Memorandum is deemed to constitute a 'settlement' as that term is defined by N.C. Gen. Stat. § 114-2.4A, nor does it require the payment of penalties or forfeitures and fines under N.C. Const. Art. TX § 7. Likewise, nothing in this Memorandum should be construed to be an admission of liability or wrongdoing by either Atlantic or the State of North Carolina its agents or assigns.

Signed:

William C. McKinney
General Counsel, Office of the
North Carolina Governor

Date:

Signed:

Leslie Hartz
Vice President-Engineering &
Construction - Strategic Projects
Dominion Energy Transmission, Inc.

Date: 1/19/18

114-2.4A

Fourth Draft Overview

- Funding increases from \$55 million to \$57.8 million
- Money would now go to “the Governor of the State of North Carolina” rather than “the State of North Carolina.”
 - Numerous handwritten notes indicate the intended change

of funds contemplated in this memorandum of understanding;

NOW, THEREFORE, the ^{Governor of the} State of North Carolina and Atlantic (together, the "Parties") endeavor to do the following:

Atlantic ^{is to offer} ^{also update and notes} commits to providing funding in the amount of \$57,800,000 ^{Governor of the} to the State of North Carolina as set forth below. The funds will be deposited in an escrow account designated by a third party selected by the Governor of the State of North Carolina ("the Escrow Account"). The funds are being provided as (i) mitigation for the unavoidable effects of the ACP on the interior forest habitat, open-space lands, waterbodies, and natural resources of the communities along the ACP's route (ii) support and funding for economic development in the counties that would be impacted by the ACP; and (iii) extension of renewable energy projects into certain local communities which may stand to be affected by the ACP's operation. Fifty per cent of the \$57,800,000 will be deposited in the Escrow Account and made available for disbursement for environmental mitigation immediately following the issuance by the Federal Energy Regulatory Commission of a Final Notice to Proceed for the ACP. The remaining balance of funds shall be deposited in the Escrow Account no later than upon the date the ACP is placed into service. In the event that Atlantic terminates the project before it is placed into service, whether in the unanticipated event that the project fails to obtain and maintain the state approvals or any other necessary permits, certifications, consents, authorizations, and other approvals or for any other reason in Atlantic's sole discretion, ^{Governor} the State of North Carolina shall deliver the proportionate share of the mitigation funds as preserved in accordance with this paragraph to Atlantic within thirty (30) days of receipt of written notice of termination from Atlantic. Such proportionate share to be returned to Atlantic shall be calculated based upon the number of miles of the pipeline route in North Carolina for which tree clearing and grubbing

2) The ^{Governor} State of North Carolina acknowledges that the funds are being provided for the purpose of (i) addressing the effects on the landscape, natural resources, interior forest habitat, agricultural lands and lifestyles of the communities caused by ACP, access roads and all associated aboveground facilities and contractor yards as described in the FERC Environmental Impact Statement; and (ii) expanding economic development opportunities and (iii) developing renewable energy projects in and around the ACP's route. The funds shall be allocated pursuant to the guidelines and directives set forth in a subsequent Executive Order that would be issued prior to the completion of state permitting for the ACP. Nothing in this Memorandum shall be construed as precluding or otherwise barring the ^{Governor} State of North Carolina from recovering damages or equitable remedies from Atlantic for spills or leaks ^{Governor} stemming from the ACP.

Factors Raising Concern

Governor Cooper:

- Repeatedly called \$57.8 M MOU payment voluntary
- Required 50 percent of the payment up front from ACP
- Attempted to circumvent the state budget process
- Switched to non binding agreement
- Proposed unnamed third party to escrow and manage funds
- Required funds for purposes outside of the FERC environmental impacts, such as economic development and expanding renewable energy
- Never issued executive order prescribed in MOU
- Could delay permitting until the executive order was issued
- Announced permit approval and MOU fund simultaneously

Unanswered Questions

- Was the integrity of the state environmental permitting process breached by mixing the MOU payments with permit approval?
- If governor's actions of associating MOU payments with a permit approval become the norm, will it have a chilling effect on business climate in North Carolina?
- What is the legal significance of modifying the document from "agreement" to "understanding"?
- Why did the MOU stipulate that an Executive Order would be issued prior to issuance/approval of final state permits?
- What criteria was used in arriving at the amount of the gift?
- Why was the document amended to reflect an agreement with the Governor rather than the State of North Carolina?

Unanswered Questions

- Why was MOU edited to state that half the money would be paid as soon as FERC issued a final notice to proceed?
- Why does it appear the partners accepted every request made by the Governor's Office without any negotiation?
- Was an Executive Order directing the disbursement of funds ever drafted, wholly or in part, within the administration?
- Does the lack of an Executive Order impact the validity of the agreement?
- Why does the document state: "Nothing in this Memorandum shall be construed as affecting the authorities of any party or as binding them beyond their respective authorities or responsibilities" if the entire MOU is non-binding?