March 2, 2021

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Comments on Restoration Plans for Atlantic Coast Atlantic and Supply Header Project, Dockets CP15-554 & CP15-555

Dear Secretary Bose:

Friends of Nelson submits these comments on the restoration plans for the Atlantic Coast Pipeline and Supply Header Project filed in response to an October 27, 2020 information request issued by the staff of the Federal Energy Regulatory Commission ("FERC" or the "Commission").[1] Friends of Nelson is a non-profit citizens advocacy organization. Its mission is to protect property rights, property values, rural heritage and the environment for all the citizens of Nelson County, Virginia.[2]

Friends of Nelson submits that it is the responsibility of FERC to order Atlantic Coast Pipeline, LLC ("Atlantic") to release the thousands of easements that were obtained by Atlantic from private landowners on the proposed path of the now-abandoned Atlantic Coast Pipeline (the "Pipeline" or "ACP").[3] This responsibility falls to FERC primarily because it bestowed upon Atlantic the power of eminent

[1] Letter from Rich McGuire, FERC, to Matthew R. Bley, Dominion Energy Transmission, Inc., Dkt. Nos. CP15-554 et al. (Oct. 27, 2020) (eLibrary No. 20201027-3057) ("October 2020 Information Request").

[2] PO Box 33, Nellysford, VA 22958, friendsofnelson@gmail.com

[3] By letters dated August 3, 2020 and February 9, 2021, the Southern Environmental Law Center filed additional comments addressing the need to release these easements. These comments were submitted on behalf of Friends of Nelson and a number of other citizen advocacy groups.

domain, ensuring its acquisition of the easements even if landowners opposed the taking. Further, FERC informed landowners that Atlantic had the legal right to insist on easements across their properties, and their only right was to receive "just compensation" for the easements in the form of a cash payment.

These easements represent a severe, continuing, and - in the wake of the project's cancellation, a totally unwarranted - burden on the properties along the Pipeline's 604-mile route. With no "public use" justification remaining, FERC must ensure that landowners' full property rights are restored. Moreover, releasing the easements will have no adverse financial impact on the Pipeline's owners – Dominion Energy, Inc. ("Dominion") and Duke Energy Corporation ("Duke Energy") - since, based on their public reporting, it seems clear that Dominion and Duke Energy have written off the full cost of these easements, and they therefore have a zero value as an asset on Dominion's and Duke Energy's respective balance sheets.

Based on the foregoing and the detailed analysis provided below, the Commission should require Atlantic to give private landowners and open-space easement holders the opportunity to regain full ownership of their property by releasing easements held by Atlantic for a pipeline it does not intend to build. Specifically, Atlantic must contact the owners of all properties where a right-of-way easement exists and inform them that (a) Atlantic will release the right-of-way easement within 90 days of a written request from an affected landowner or open-space easement holder; (b) Atlantic will provide the affected landowner or open-space easement holder with the proposed written release of the right-of-way easement; (c) Atlantic will pay the reasonable attorneys' fees of the affected landowner or open-space easement holder incurred in reviewing and negotiating changes to the proposed written release of the right-of-way easement; and (d) Atlantic will file the final, executed written release of the right-of-way easement in the land records of the appropriate jurisdiction.

In support of its request, Friends of Nelson states:

1. The easements are a serious, continuing, and completely unwarranted burden on thousands of properties, but they are not needed for the now-abandoned Pipeline. The easements consisting of Temporary Easements and/or Permanent Easements may significantly diminish the owner's enjoyment of their property and materially diminish its value.

2. FERC and Atlantic bear joint responsibility for these easements. FERC's action in granting the certificate of public convenience and necessity for the Pipeline bestowed on Atlantic the right to forcibly acquire easements on private property through the exercise of eminent domain. Atlantic acquired easements over a number of properties by suing property owners and exercising their right of eminent domain, and negotiations for the "voluntary"

easements were coerced by Atlantic's statements that it would use its power of eminent domain to forcibly acquire the easements if the property owners resisted. FERC directly supported Atlantic's coercive actions by informing landowners that Atlantic had the right to acquire easements across their property using the power of eminent domain, and the property owners' only right was to receive "just compensation" for the easements. It is FERC's responsibility to order Atlantic to release those easements. It is Atlantic's responsibility to comply.

3. While the ongoing damage to owners of property that is encumbered by the easements is substantial, release of the easements will cause no financial harm to Dominion or Duke Energy. Based on their public reporting, Dominion and Duke Energy have written off their investments in the Pipeline, which would include the cost of the easements.

ANALYSIS

I. The easements are a serious, continuing and completely unwarranted burden on thousands of properties in Nelson County and elsewhere in Virginia, West Virginia and North Carolina, but they are not needed for the now-abandoned Pipeline.

Over the course of planning its now-abandoned Pipeline, Atlantic obtained thousands of easements from private landowners, many secured through eminent domain proceedings or through easement agreements backed by the threat of Atlantic's exercise of eminent domain. By remaining in place even after the cancellation of the project, these easements burden landowners' ability to use or sell their property—and also their peace of mind, due to the threat that Atlantic could someday transfer the easement to the developer of another project.

Even though it no longer plans to build the Pipeline, Atlantic has publicly stated that it does not intend to voluntarily release the easements.[4] Nor has Atlantic committed not to transfer the easements to a third party for use in another pipeline or infrastructure project, saying only that it "ha[s] no plans to do so at this time."[5] Atlantic's intransigence raises questions about why it needs to hold onto easements for which it should have no future use. The Commission should require

[4] Sarah Rankin, *Regulators Get Plan for Undoing the Atlantic Coast Atlantic*, Associated Press, Jan. 5, 2021, https://bit.ly/3c9R3ki.

[5] *Id.*

Atlantic to give private landowners and open-space easement holders the opportunity to regain full ownership of their property by releasing the easements.

The damage from the easements is ongoing and very serious. Friends of Nelson has researched the more than 250 easements and easement modification agreements that were filed at the Nelson County Courthouse between October 2015 and July 2020. The typical easement agreement provides for both a Temporary Easement and a Permanent Easement. The Permanent Easement the area where the Pipeline was to cross the owner's property typically is 50 feet wide. The location of the Permanent Easement is set forth on a plat of the owner's property, and is recorded in the public Land Records of the applicable local jurisdiction (often, in the Clerk of the Court's Office at the County Courthouse). The owner is prohibited from doing many things within the Permanent Easement, including, but not limited to erecting structures such as a house or barn, planting trees and moving earth. These prohibitions continue forever, even though the Pipeline will never be built.[6]

The Temporary Easements usually encumbered a combined total of 75 feet of land on the two sides of the Permanent Easement (typically, 15 feet on one side of the Permanent Easement and 60 feet on the other side). The Temporary Easements sometimes included many further thousands of square feet for Additional Temporary Workspaces. Because those Temporary Easements remain in force until a certain number of years (e.g., five years) from the start of construction or the "in service" date of the Pipeline, they have become, in effect, a permanent concern/consideration for the landowners as well.

Many landowners along the abandoned route will find the (now unwarranted) restrictions to substantially constrain their full use and enjoyment of their land. To illustrate how these constraints may limit a landowner's use of their land, consider some specific Nelson County examples that Friends of Nelson has identified:

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[6] Typical language that is included in the Easement Agreements reads: *"Grantor (i.e., the owner of the property) shall not construct nor cause to be constructed any permanent or temporary structures or obstructions of any kind within the Permanent Easement, including but not limited to buildings, garages, sheds, pools, mobile homes, trees, poles or towers. No construction equipment or vehicles of any kind shall be stored, nor heavy machinery or equipment operated, within the Permanent Easement; provided, that nothing herein shall prohibit the use of typical farming equipment and farming activities. No earth shall be removed from or filled upon the Permanent Easement without the express written consent of Grantee (i.e., Atlantic). Grantor shall be responsible for complying with any state or local "once call" requirements in the event of construction on or near the Permanent Easement."*

1. A landowner has a steep, rustic driveway that cannot be improved without engaging in earthmoving activity which she is forbidden to do unless she obtains "the express written permission of the Grantee (i.e., Atlantic),"

2. A subdivision may be similarly limited in its ability to repair or improve some of its roads in the future because of the easement that crosses them.

3. Multiple Nelson County landowners are prohibited from constructing a house, barn or other structure within the path of the easements, even though the best sites for such structures are within the easements.

4. In another case, a parcel's sole developable house site lies outside of the easement, but can only be accessed by crossing the easement, necessitating the construction of a driveway or road in violation of the easement terms.

5. There is a larger parcel that is otherwise well-suited to subdivision and development but whose owners fear they or their heirs will never be able to do so because of the easement's strictures. What lender would approve financing for projects like these that clearly violate the terms of a duly recorded easement?

And, even for landowners who have no desire to further develop their parcels, "zombie easements" like those left behind by Atlantic's abandoned project may still be a serious impediment to future sale of the parcels. Title companies will note the recorded encumbrance and raise it as an "objection to title" in their commitment for title insurance. In some cases, this may limit the scope of the title insurance the buyer can obtain and, hence, the financing available to them. Moreover, the existence of the easements and their limitations must be disclosed by the realtors when a property is listed for sale. Faced with the myriad complications, confusion and potential future threats caused by the easement's encumbrance on the property, many potential buyers would simply walk away and look for a different parcel.

Finally, will Atlantic even be in existence years from now when landowners need to track them down to ask for modifications or exceptions to the restrictions in the easements? As any title attorney will attest, it can be exceedingly difficult to locate the beneficial owner of an easement years after that owner has ended its use of the easement. And, based on our research, most of the easements signed in

Nelson County do not even require Atlantic to notify landowners if the easement is transferred to another entity, thus making it even more challenging for these individuals to secure the modifications or exceptions they might need.

Thus, the easements are a serious, continuing, and completely unwarranted burden on thousands of properties. They may significantly diminish the owner's enjoyment of their property and materially diminish its value and prospects for future sale. Moreover, the easements also burden landowners' peace of mind, due to Atlantic's implied threat that it could someday transfer the easements to the developer of another project.

II. FERC must order Atlantic to release all easements that Atlantic acquired to construct and maintain the Atlantic Coast Pipeline since FERC's action in granting the certificate of public convenience and necessity for the Pipeline bestowed on Atlantic the right to forcibly acquire easements on private property through the exercise of eminent domain. Atlantic acquired easements over a number of properties by suing property owners and exercising their right of eminent domain, and negotiations for "voluntary" easements were coerced by Atlantic's statements that it would use its power of eminent domain to forcibly acquire the easements if the property owners resisted. FERC directly supported Atlantic's coercive actions by informing landowners that Atlantic had a right to acquire easements across their property using the power of eminent domain. FERC informed landowners that they could not refuse to grant the easements – they had only two options, to try to negotiate the terms of the easements with Atlantic or be taken to court by Atlantic and ordered to grant the easements.

In *Atlantic Coast Pipeline, LLC v. 5.63 Acres, More or Less, in Buckingham County, Virginia*,[7] and 26 additional eminent domain proceedings brought in 2018 in the United States District Court for the Western District of Virginia, Atlantic Coast Pipeline, LLC (defined by the Court as "ACP") sought to acquire easements to construct the Atlantic Coast Pipeline (defined by the Court as the "Pipeline") against the wishes of the affected landowners and by a "quick-take" process, meaning that the easements would be granted and ACP would be entitled to enter the affected properties and engage in construction activities even though the certificate of public convenience and necessity for the Pipeline was being challenged in a number of court proceedings. In a Memorandum Opinion dated February 28, 2018, Judge Moon analyzed the eminent domain requirements as follows (citations omitted):

[7] No. 6:17-cv-84, 2018 WL 1097051 (W.D. Va. Feb. 28, 2018)

> "Under the Natural Gas Act, 15 U.S.C. § 717f(h): When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipeline . . . , it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located . . . . 15 U.S.C. § 717f.
>
> "ACP is an interstate natural gas company, as defined under 15 U.S.C. § 717a(6), and holds a certificate of public convenience and necessity from the Federal Energy Regulatory Commission ("FERC") to construct the Atlantic Coast Pipeline through parts of West Virginia, Virginia, and North Carolina.
>
> "[A] plaintiff must satisfy three requirements to exercise eminent domain under § 717f(h): (1) it holds a valid FERC certificate; (2) the easements it seeks are necessary; and (3) it has been unable to acquire easements by agreement."

Judge Moon then proceeded to grant ACP the requested easements on virtually all the involved properties where the landowners were properly served with legal process.

Thus, landowners along the route who were approached by Atlantic to sign easement agreements were well aware that if they refused, they would be taken to court and eventually their land would be seized under eminent domain. Indeed, in 2018 Atlantic filed dozens of eminent domain lawsuits against Nelson County landowners and, in the wake of Judge Moon's memorandum, it was eminently clear that, like it or not, they *were* going to lose their land rights. The only question that remained was what kind of compensation or other considerations they could obtain in exchange for Atlantic's inevitable acquisition.

Beyond monetary considerations, many landowners had additional concerns related to an easement on their property, none of which would be addressed by a court solely tasked to determine "just compensation", and which, in quick-take cases, *would not even hear the case until months or years after the construction of the Pipeline commenced*. To give just a few of the dozens of examples that can be found in various easement agreements in Nelson County, some negotiated to have the Pipeline routed father away from the portion of their property where their house was, or to limit Atlantic's ability to adjust the pipe location from that shown on the easement plat, or to modify or eliminate a proposed access road. Some wanted assurance that livestock fences damaged in construction would be replaced with fencing of specific quality, or that Atlantic would install gates to discourage trespassing ATVs from accessing the landowner's property via the easement's newly-cleared right-of-way. Some sought to minimize fire danger by prohibiting

Atlantic from burning slash on their steeply wooded slopes, others to limit the depth of the woodchips that Atlantic could spread, or to prevent herbicides from being applied or to ensure that the massive quantities of water needed for hydrostatic testing of the line would not be discharged on their property. Some wanted specific insurance documentation and/or indemnification clauses. Some wanted to be given advance notice if blasting were to occur. Some wanted an assurance that, if the Pipeline were abandoned in the future, the pipe would be excavated and removed from their land and/or the easement would be released. *None of these - or dozens of other landowner preferences – are considerations that they could expect to obtain in a court proceeding designed to determine "just compensation", especially if that hearing was not even likely to occur until well after construction was underway***.**

Landowners who did not settle privately with Atlantic, and instead let the case go to eminent domain court, could expect their "just compensation" award would be solely monetary, based purely on the demonstrable value of the land rights being lost. To support their case, they would have to pay out-of-pocket for an appraiser (and often other expert witnesses) to challenge Atlantic's valuation assessment. Such an expense was not feasible for many landowners and, with the exception of landowners with particularly valuable properties, might not even justify the cost. Still, without that additional testimony, such landowners would be even less able to effectively defend against Atlantic's phalanx of retained lawyers, appraisers and expert witnesses. Ultimately, those who embarked on this process and/or their attorneys would have to file multiple court briefs as well as deal with Atlantic's sometimes extensive discovery requests. Most eminent domain attorneys charge fees as a fixed percent (usual 30-35%) of the difference between Atlantic's initial (usually shockingly low) offer and the ultimate award. Thus, after accounting for the aforementioned costs, the landowner could expect to actually bank far less than the purported value of the land being taken. Most landowners would also have to pay taxes on the award amount. So much for "just" compensation. Thus, going to eminent domain court was a hugely expensive and time-consuming process that was foisted upon the landowner who likely never wanted the Pipeline on their land in the first place. It was only the rare landowner that had the stomach (or the pocketbook) to run this gauntlet.

Verbiage in offer letters that landowners received from Atlantic frequently carried the clear warning that if they "(chose) not to accept this offer…(Atlantic) will have no choice but to transmit your file to our attorneys for further handling." In other words, they knew they would be taken to court, where, as we have noted above, in addition to incurring extra expenses, they would lose their chance to secure the non-monetary considerations that in some cases were more important to them than mere money. Thus, it is not surprising that virtually every landowner –

regardless of their feelings about having the Pipeline on their property – eventually signed a "voluntary" easement agreement. It is particularly telling to note that in Nelson County, all but two of the dozens of "holdout" landowners who were sued by Atlantic to force an easement on their property by eminent domain and quick-take lawsuits in the fall of 2018 settled with Atlantic relatively soon thereafter.

FERC's responsibility for the current easements that encumber thousands of properties along the path of the now-abandoned Pipeline thus is clear. When FERC granted Atlantic the certificate of public convenience and necessity to construct the Pipeline, the direct consequence was that Atlantic immediately acquired the right to impose easements on all the properties along the path of the Pipeline. This right to impose easements by the use of eminent domain was explicitly stated in Section 717f of the Natural Gas Act. FERC fully understood that it was activating this right of eminent domain by granting the certificate, and FERC knew that Atlantic would obtain the easements either by suing the landowners in Federal court or by coercing them into "voluntarily" granting the easements. That is exactly what happened as evidenced by Judge Moon's opinion and FERC's "advice" to landowners that resistance was futile.

FERC's complicity in the establishment of the easements began at the very beginning the process for its approval of the Pipeline, and it continued until the Pipeline was abandoned. Since at least 2010, FERC has produced a brochure entitled *"An Interstate Natural Gas Facility on My Land? What Do I Need to Know?"* that is provided to landowners – sometimes even before the company has formally applied to build the pipeline. The August 2015 version that is described below and is currently available on FERC's website[8] is essentially identical to the August 2013 version that many landowners received while Atlantic was still in the "pre-filing" phase for the Pipeline. At the time, Atlantic was seeking to do surveys on land that was on one of their preferred paths for the Pipeline. The brochure features picture after picture of bucolic flower-filled meadows and beautiful mountains barely impacted by the path of the Pipeline. At the very beginning of the brochure, on page 4, FERC assures landowners that they are sensitive to their concerns:

> "Understandably, the location of pipelines and other facilities may be of concern to landowners. The Commission's process for assessing pipeline applications is open and public, and designed to keep all parties informed."

But FERC then drops the hammer, telling landowners that if do not grant the pipeline company (in this case, Atlantic) whatever easement they demand, the pipeline company will take them to court, with the associated costs and uncertainties, and obtain the easement:

[8] https://www.ferc.gov/sites/default/files/2020-04/gas.pdf

> "The Commission may approve the project, with or without modifications, or reject it. ***If it is approved and you fail to reach an easement agreement with the company, access to and compensation for use of your land will be determined by a court***." (emphasis added)

On page 8, FERC reiterates that the pipeline developer has the right to take their land and impose an easement by eminent domain. It asks the question "How do natural gas companies obtain a right-of-way?," and it answers it as follows:

> "The company negotiates a right-of-way easement and compensation for the easement with each landowner. Landowners may be paid for loss of certain uses of the land during and after construction, loss of any other resources, and any damage to property. If the Commission approves the project and no agreement with the landowner is reached, the company may acquire the easement under eminent domain (a right given to the company by statute to take private land for Commission-authorized use) with a court determining compensation."

Just so it is clear that this easement will last for many years, FERC then asks the question: "How long will the right-of-way be there?", and it answers it as follows:

> "Part of it is temporary and will be restored immediately after construction. The permanent right-of-way will remain until the Commission determines it can be abandoned by the pipeline company. This can be 20 to 50 years or more."

And what happens if the pipeline is abandoned? FERC asks the question: "If a company abandons a pipeline, can it keep an easement on my property?", and it answers it as follows:

> "It depends on the terms of the easement agreement and may be subject to negotiation between the landowner and the pipeline company."

Note that, with only two very narrow exceptions, we are unaware of any easement that Atlantic obtained that provides that the easement will be released in our current situation – that is, in the wake of Atlantic's public determination that it is abandoning the Pipeline and will never build it. [9]

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[9] 1) Although not addressing the specific circumstances created by Atlantic's cancellation of the Pipeline, a substantial percentage of Nelson landowners were successful in obtaining a clause in their easement providing for easement release if, after the pipe is in the ground/ in service, the project is then "abandoned" (i.e., not used) for a certain number of years (usually 4) after the pipe is in the ground/in service. 2) A very few others were able to obtain a bit more "zombie easement" protection – though not enough for the situation as it stands today -- by getting Atlantic to agree to a clause that triggers easement release in the event that FERC

Which brings us back to the issue of the stark power imbalance that exists when a landowner sits across the table from a deep-pocketed Atlantic that FERC has granted the power of eminent domain. In the face of FERC's recitation that Atlantic has the absolute right to acquire easements for the Pipeline through eminent domain, and Atlantic's demonstrated willingness to impose easements through lawsuits claiming eminent domain, what were landowners to do? Landowners had only two choices when confronted with Atlantic's demand that they grant an easement across their property. They could attempt to negotiate favorable terms for the easement. But Atlantic held all the cards. Atlantic made it clear (and FERC backed them up) that they were entitled to the easement, period. And Atlantic always had the ability to walk away from the negotiations at any time while still being assured it would get the result most important to it: the full easement on the land. The second option, refusing to grant the easement and defending their position in court, was a meaningless option for virtually all landowners. Such a legal fight would require them to incur substantial and unrecoverable costs, would preclude them securing other beneficial terms before construction commenced, and, in the end, would never achieve most landowners' primary goal: preventing the actual taking. Due to the disparity in power of the landowner and Atlantic and its corporate parents, the chances that the landowner would win the lawsuit were vanishingly small. So the "negotiations" between the landowner and Atlantic were completely one-sided, and the process that led to the "voluntary" easements in the great majority of the cases was entirely coercive.

FERC and Atlantic thus bear joint responsibility for the thousands of easements that currently encumber the properties of landowners on the path of the now-abandoned Pipeline. They are jointly responsible for thousands of landowners being stuck in a "zombie easement" limbo. It is FERC's responsibility to order Atlantic to release those easements. It is Atlantic's responsibility to comply.

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permanently revokes the project's Certificate. 3) Our research has uncovered ONLY TWO easements in all of Nelson County where landowners were successful in negotiating clauses that clearly provided for easement release if the Pipeline is cancelled prior to construction. One was a landowner who, over years of negotiations aggressively prioritized this issue. In that case, the easement will only be released after a whopping *20 years*. In the other, the landowner was a bit more successful: their easement will be released in a mere *10 years*. But note that this second landowner was actually the Virginia Board of Game and Inland Fisheries. It is telling that a government agency had leverage that private landowners could not even hope for.

III. While the ongoing damage to owners of property that is encumbered by the easements is substantial, release of the easements will cause no financial harm to Dominion Energy, Inc. or Duke Energy Corporation, the owners of Atlantic. Based on their public reporting, it seems clear that Dominion and Duke Energy have written off their investments in the Pipeline, which would include the cost of the easements.

On July 5, 2020, Dominion Energy, Inc. and Duke Energy Corporation issued a joint press release titled "Dominion Energy and Duke Energy cancel the Atlantic Coast Atlantic." In the press release, they stated that "Dominion Energy (NYSE: D) and Duke Energy (NYSE: DUK) today announced the cancellation of the Atlantic Coast Pipeline." It added: "Thomas F. Farrell, II, Dominion Energy chairman, president, and chief executive officer, and Lynn J. Good, Duke Energy chair, president, and chief executive officer, said: We regret that we will be unable to complete the Atlantic Coast Pipeline."

A. Dominion Energy SEC Filings and Public Disclosures

In a Form 8-K by Dominion Energy, Inc. dated July 2, 2020, Dominion reported under Item 2.06 Material Impairments that:

> "On July 5, 2020, Dominion Energy, Inc. (Dominion Energy) and Duke Energy Corporation (Duke Energy) announced the cancelation of the Atlantic Coast Pipeline project (the "ACP") due to continued permitting delays and legal challenges . . . .[10] This decision was approved by Dominion Energy's Board of Directors on July 2, 2020. As a result of this decision, Dominion Energy will recognize estimated pre-tax charges in the range of $2.7 billion to $3.2 billion related to the ACP Project and the associated Supply Header project, of which the majority is expected to be reported in second quarter 2020 earnings and the remainder as exit costs are incurred."

In its Form 10-Q for the quarter ended June 30, 2020, Dominion reported that:

[10] "The ACP Project is a proposed 600-mile natural gas pipeline running from West Virginia through Virginia to North Carolina. Atlantic Coast Pipeline, LLC, a subsidiary of Dominion Energy, owns 53% of Atlantic Coast Atlantic, LLC, the entity that owns the ACP Project. Duke Energy Atlantic, LLC, a subsidiary of Duke Energy, owns 47% of Atlantic Coast Pipeline, LLC."

> "In December 2014, DETI entered into a precedent agreement with Atlantic Coast Pipeline, LLC for the Supply Header Project. As a result of the cancellation of the Atlantic Coast Pipeline Project, Dominion Energy and Dominion Energy Gas recorded a charge of $482 million ($359 million after-tax) in impairment of assets and other charges in their Consolidated Statements of Income for the three and six months ended June 30, 2020 associated with the probable abandonment of a significant portion of the project as well as the establishment of a $75 million ARO. As DETI evaluates its future use, approximately $40 million remains within property, plant and equipment for a potential modified project."

Dominion's reference to "a potential modified project" apparently refers to a modification to the Supply Header Project, which was a minor portion of the overall Pipeline project.

Later, in the same Form 10-Q, Dominion stated:

> "In July 2020 . . . Dominion Energy and Duke Energy announced the cancellation of the Atlantic Coast Pipeline Project. As a result of the determination of the probable abandonment of the Atlantic Coast Pipeline Project in June 2020 Atlantic Coast Pipeline, LLC has provided to Dominion Energy that it recorded net losses of $4.4 billion and $4.3 billion for the three and six months ended June 30, 2020, respectively."

In this Form 10-Q and subsequent statements, Dominion repeatedly referred to the "the cancellation of the Atlantic Coast Pipeline Project", that the Project is reflected as "discontinued operations," that the cancellation constitutes "an abandonment" of the Project, and that "Dominion Energy expects to incur additional losses from Atlantic Coast Pipeline, LLC as it completes wind-down activities."

B. Duke Energy SEC Filings and Public Disclosures

In a Form 8-K by Duke Energy Corporation, dated July 5, 2020, Duke Energy reported under Item 2.06 Material Impairments and Item 8.01 Other Events that:

> "On July 5, 2020, Duke Energy Atlantic, LLC ("Duke Atlantic") and Piedmont Atlantic Company, LLC ("Piedmont Atlantic"), each a wholly-owned subsidiary of Duke Energy Corporation ("Duke Energy" or the "Company"), determined that they would no longer invest in the construction of the Atlantic Coast Pipeline (the "Project"). Permitting delays and legal challenges (including certain recent court decisions impacting construction permits) have materially affected the timing and cost of the Project. Further, on July 5, 2020, Dominion, the parent of the lead developer, constructor and operator of the Project, announced a sale of substantially all of its gas transmission and storage segment assets; operations core to the Project. This

development further supported the decisions of Duke Atlantic and Piedmont Atlantic to cease future investment.

"As a result, on July 5, 2020, Duke Energy determined it will take charges to earnings of approximately $2.0 billion to $2.5 billion before income tax. Duke Energy expects approximately $2.0 billion to $2.2 billion of the pre-tax charges to be recorded in the second quarter 2020 and expects the remainder to be recorded later in 2020 when certain exit costs related to the Project are incurred by Duke Atlantic."

Similarly, in a Form 10-Q dated August 10, 2020, Duke Energy reported:

"As a result of (various factors), Duke Energy's Board of Directors and management decided that it was not prudent to continue to invest in the project. On July 5, 2020, Duke Energy and Dominion announced the cancellation of the Atlantic Coast Pipeline. As a result, Duke Energy recorded a pretax charge to earnings of approximately $2.0 billion for the three months and six months ended June 30, 2020."

Duke Energy has repeatedly referred to "the cancellation of the Atlantic Coast Pipeline" and "the abandonment of the Atlantic Coast Pipeline," noting that "Duke Energy's Board of Directors and management decided that it was not prudent to continue to invest in the project."

From the public reporting of Dominion and Duke Energy, it thus seems clear that Dominion and Duke Energy have fully written off the costs relating to the cancelled and abandoned Atlantic Coast Pipeline Project. The costs relating to the Project include the costs of acquiring the easements. As a result, requiring Dominion and Duke Energy (through Atlantic) to release all of the easements, which are carried on their balance sheets as having zero value, will have no financial impact on Dominion or Duke Energy.

* * *

For the reasons set forth herein, the Commission should require Atlantic to give private landowners and open-space easement holders the opportunity to regain full ownership of their property by releasing easements held by Atlantic for a Pipeline it does not intend to build. Specifically Atlantic must contact the owners of all properties where a right-of-way easement exists and inform them that (a) Atlantic will release the right-of-way easement within 90 days of a written request from an affected landowner or open-space easement holder; (b) Atlantic will provide the affected landowner or open-space easement holder with the proposed written release of the right-of-way easement; (c) Atlantic will pay the reasonable

attorneys' fees of the affected landowner or open-space easement holder incurred in reviewing and negotiating changes to the proposed written release of the right-of-way easement; and (d) Atlantic will file the final, executed written release of the right-of-way easement in the land records of the appropriate jurisdiction.

Respectfully submitted,

/s/Douglas Wellman

Douglas Wellman
President
Friends of Nelson

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: March 2, 2021

/s/ Douglas Wellman

Douglas Wellman
President
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