



Atlantic Coast Pipeline in North Carolina

Dec. 20, 2018

SUMMARY: The granting of permits to allow construction of the Atlantic Coast Pipeline (ACP) was a rigorous and fact-based process handled by state environmental regulators. The establishment of the ACP Mitigation fund was to provide jobs, environmental mitigation and renewable energy to offset the impact of the pipeline in eastern North Carolina.

From Governor Cooper's first month on the job, proponents had asked him to support the pipeline and opponents had asked him to stop it. The ACP had asked him to join other governors and request fast-track FERC approval; opponents asked him to oppose natural gas and direct the Department of Environmental Quality (DEQ) to deny permits. The Governor knew that decisions on permits had to be made by experts at DEQ and he told that to DEQ Secretary Michael Regan.

The Governor supported a move to renewables and decreased reliance on fossil fuels but also knew that change couldn't happen immediately. At the same time, several issues related to North Carolina's energy and environmental future were converging, and while separate, all would impact the state's future: natural gas access with the ACP and a departure from coal as a fuel source, expansion of renewables like solar and wind, the need for grid modernization, the possibility of offshore oil drilling which the Governor opposed, and more.

On the ACP, the Governor appropriately allowed state environmental regulators to do their due diligence on reviewing permit applications. At the same time, the administration wanted to find ways to make the project keep its promise for job opportunities in eastern North Carolina if the project received approval and was built.

Meanwhile, local business and agriculture leaders as well as pipeline opponents raised questions in 2017 about whether the ACP would fulfill the economic promises and environmental mitigation that had convinced many communities and politicians to support it back in 2016.

As these concerns were expressed, the North Carolina Governor's Office found a response with an economic development and environmental fund that could provide a benefit to the counties bisected by the ACP. Other states had established mitigation funds, the ACP explained, and North Carolina could, too.

The administration did not trust the General Assembly to use the fund to spur economic development and environmental protection, a suspicion proven true by the legislature's eventual diversion of the fund as part of its political theater.

Pipeline pathway cut through area of economic need

The idea behind the fund was to help eastern North Carolina – a region that lags the state's major metropolitan areas in income levels, job creation and education attainment.

As early as mid-July, 2017, the NC Farm Bureau raised concerns about whether farmers could access the pipeline as promised. The DEQ convened the NC Department of Commerce, Department of Natural and Cultural Resources, and Department of Public Safety for listening sessions over the next month, and heard concerns about environmental justice, environmental protection, economic development and public safety.

Throughout the fall, even supporters who had appeared in pro-pipeline TV ads raised questions about economic opportunities.

The Governor's Office searched for answers and solutions. Would taps be available for farms or business parks to access gas? How much of the gas was already spoken for? Other than the short-term construction jobs, what long-term economic development would occur?

In late October, the Governor's senior staff sat down to talk about energy issues the state was facing—two rate increases, coal ash disposal, grid modernization, ACP, and HB589 (which would increase solar implementation but put a moratorium on wind energy). It was important to have a global perspective on the energy issues facing our state.

One new concern was an impasse over the implementation of how HB589 was to work between solar energy providers and Duke Energy. Among other things the new law had set out criteria for bringing solar projects forward, but Duke Energy declined to connect about 75 solar projects awaiting interconnection to the grid.

This was a concern because Governor Cooper had signed HB 589 based in part on the promise of increased renewable energy despite its ban on wind energy. The two sides failed to come together and the Governor talked with Duke CEO Lynn Good just after Thanksgiving. Topics of their discussion were: the solar impasse, rate cases, grid modernization, the ACP, industrial recruitment and coal ash.

During the meeting, the Governor talked about the importance of renewable energy and getting more solar energy to the grid. He also questioned the ACP TV ads that promised jobs and whether those promises would be fulfilled. He encouraged her to find ways that small and mid-sized businesses could connect to the ACP.

And the Governor reiterated specifically that the state-mandated permits for sedimentation and erosion control, water, and air quality for the ACP were to be handled only at DEQ. The project had to meet permit requirements on its own merits.

The idea of the Mitigation Fund

A week or so later, the Governor's Senior Advisor, Ken Eudy, met with Duke's state government liaison, Kathy Hawkins, and they discussed the counties in the path of the ACP. Hawkins outlined a fund that would help. Other ACP states—Virginia and West Virginia—were to have funds as well.

The ACP generated the first draft of a Memorandum of Understanding (MOU) and shared a copy with the Governor's Office Legal Counsel, William McKinney, in early December. It was modeled on an ACP draft mitigation agreement with Virginia, but it contained no provision for economic development.

Meanwhile, the Governor's Office continued to hear from environmentalists who wanted the DEQ to reject the ACP permits. Among the concerns were water quality but also burning fuel for energy. The Governor's Office asked DEQ for ways to use renewable energy to reduce carbon emissions.

Examples of these "mitigation options" included investments in community solar projects for rooftops, industrial or commercial energy efficiency projects, and weatherization on public buildings to lower their energy costs.

After the feedback, the draft MOU added economic development and renewable energy, and the ACP agreed. While the ACP's engagement with the Governor's office was voluntary, that is, the ACP was not required to create a fund as a condition to receive any permit, the ACP had an obligation under its FERC application to ensure public benefit from the pipeline.

This ensuring of a public benefit was a reason why similar funds were created in other states as well as North Carolina. An agreement like the one that took shape would meet the interests of the state and the ACP project developers.

State permit processes continues throughout 2017

In mid-December, Eudy briefed DEQ Secretary Michael Regan on the MOU outline and status of the HB589 agreement. Regan wasn't involved in the MOU and Eudy wasn't involved in the permit applications decisions, but both of these issues involved the area around the proposed ACP pipeline.

Throughout the year the DEQ Secretary's office had kept the Governor's Office informed about permit timetables, and shared permit approvals and denials along with information requests and news releases. By December, Secretary Regan said that if information DEQ requested addressed the DEQ permit writers' concerns, the ACP would get the permits it needed to start construction by the first of the year.

Meanwhile, the resolution of the HB 589 solar dispute remained in doubt. While that resolution wasn't connected to the ACP, the Governor's Office hoped to have a solar agreement and the MOU done around the same time as permit approval was announced to give the public a full understanding of eastern North Carolina's energy landscape. Specifically, the Governor's Office wanted to know which of the backlogged solar projects were in ACP counties to show the effort to reduce the carbon impact.

The Governor's Office planned to sign the MOU as early as January 2, but then learned that Virginia was getting more money and so asked the ACP for the same amount, \$57.8 million.

In mid-January, the ACP asked the Governor's Office if a historic properties agreement outlining how the ACP would preserve artifacts during construction had been signed, and the Governor's Office learned that the agreement was sent to FERC by the NC State Historic Properties Office. Unsure about what level of review had occurred, staff asked to recall the agreement. After review, the agreement was resubmitted to FERC without change.

Permit approval announcement

In anticipation of the DEQ permit announcement, the Governor met with some representatives from environmental groups. He wanted to talk with them personally because he knew they would be disappointed that the permit was granted.

At this meeting, Secretary Regan explained the rigorous permitting process. The Governor also told them that the ACP had agreed to a fund that will be used for economic development, environmental protection and renewable energy and he discussed the HB589 agreement that was coming together, although not completed.

The MOU was signed the day before DEQ issued the water permit. The Governor's Office did this at roughly the same time to show how the mitigation fund and the solar agreement helped counter-balance the carbon impact and small number of permanent jobs resulting from the ACP construction.

After these announcements, the Governor's staff continued discussions about how the fund would be administered, including which subject-matter experts would serve as trustees and directors of the fund and how it would operate as a grant-making organization. Eligible applicants such as economic development nonprofits or local governments would have applied for the funds for energy conservation or gas line extensions, for example. Since the final FERC approval was months away the fund administration decisions could wait while potential trustees were vetted for conflict or ethics reviews.

In summary:

- The ACP water quality permit was issued solely based on a thorough, demanding review by DEQ regulators.
- A fund was created to help the counties along the route with economic development and environmental issues.
- Progress was made toward putting more than 300 megawatts of renewable solar energy on the grid.

This fund was to help areas around the ACP create jobs and reduce the carbon impact. But the legislature wanted to create a false narrative about political power, so they raided the fund and appropriated it for a purpose that the ACP didn't agree to and that isn't directly related to energy, economic development or conservation.
