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May 15, 2018

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

**Re: U.S. Fourth Circuit Court of Appeals Vacates Incidental Take Statement
for Atlantic Coast Pipeline
Dockets CP15-554 et seq. & CP15-555 et seq.**

Dear Secretary Bose:

Today, the U.S. Fourth Circuit Court of Appeals vacated the Incidental Take Statement for the Atlantic Coast Pipeline issued as part of the Biological Opinion prepared by the Fish and Wildlife Service. A copy of the court's order is attached.

An incidental take statement is a required component of formal consultation under the Endangered Species Act. 50 C.F.R. § 402.14(g)(7). Because the court vacated the Incidental Take Statement, consultation is not complete and construction cannot commence as specified by Environmental Condition 54 in the Commission's Certificate Order for the Atlantic Coast Pipeline. 161 FERC ¶ 61,042 (Oct. 13, 2017). Therefore, the Commission must halt all on-the-ground construction activities and revoke or suspend all notices to proceed for the Atlantic Coast Pipeline until consultation has been reinitiated and completed and the defects of the Incidental Take Statement are remedied.

The vacatur of the Incidental Take Statement also halts implementation of the U.S. Forest Service's Record of Decision and Special Use Permit for the Atlantic Coast Pipeline which are contingent upon compliance with a valid biological opinion and incidental take statement. U.S. Forest Service, Record of Decision, Atlantic Coast Pipeline at 13 (Nov. 2017). Permits issued by the U.S. Army Corps of Engineers likewise must also be supported by a valid biological opinion and incidental take statement. 16 U.S.C. § 1536(a). Therefore, the Forest Service and Corps of Engineers must halt all on-the-ground pipeline activities under these permits until consultation has been reinitiated and completed and the defects of the Incidental Take Statement are remedied.

Sincerely,

s/ Gregory Buppert

Gregory Buppert

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