



**File Code:** 1900; 2700  
**Date:** December 13, 2016

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First St., N.E., Room 1A  
Washington, DC 20426

Dear Ms. Bose:

**Subject:** Forest Service Response to FERC's request for Consultation for FAST-41 for the Atlantic Coast Pipeline Project  
OEP/DG2E/Gas 4  
Atlantic Coast Pipeline, LLC  
Docket No. CP15-554-000 and -001

The Forest Service appreciates the request from the Federal Energy Regulatory Commission (FERC) for consultation concerning the Coordinated Project Plan and Permitting Timetable for FAST-41, for the proposed Atlantic Coast Pipeline Project. The Forest Service's comments are detailed in the attached letter, emailed to FERC staff on November 18, 2016, and provided via this letter for submittal to the docket.

If you have any questions, please contact Jennifer Adams, Special Project Coordinator, by phone at 540-265-5114 or by email at [jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us).

Sincerely,

  
CLYDE THOMPSON  
Forest Supervisor

cc: Atlantic Coast Pipeline, LLC



**File Code:** 1900; 2700  
**Date:** November 18, 2016

Nicholas Tackett  
Federal Energy Regulatory Commission  
888 First St., N.E., Room 1A  
Washington, DC 20426

Dear Mr. Tackett:

**Subject:** Forest Service Response to FERC's request for Consultation for FAST-41  
Atlantic Coast Pipeline Project  
Docket No. CP15-554-000 and -001

The Forest Service received your email dated November 4, 2016 requesting feedback on the Coordinated Project Plan and Permitting Timetable for the proposed Atlantic Coast Pipeline Project. **As discussed in detail below, the Forest Service does not concur with the permitting timetable and requests that the permitting timetable be revised to state that the final completion date of the Forest Service's consideration of the special use permit application is "To Be Determined."** Herein, The Forest Service provides specific comments below on the list of roles and responsibilities, potential avoidance, minimization, and mitigation strategies, and the plans and schedule for public and tribal outreach.

On December 4, 2015, the United States President signed into law the Fixing America's Surface Transportation (FAST) Act. Title 41 of the FAST Act ("FAST-41") created a new governance structure, set of procedures, and funding mechanisms to improve the timeliness, predictability, and transparency of the Federal permitting and environmental review process for major infrastructure projects (i.e., "covered projects") across a broad range of sectors and project types (the full text of Title 41 can be viewed here: <https://goo.gl/tslmCt>). FAST-41 defines covered projects as those that require authorization or environmental review by a Federal agency involving construction of infrastructure for a covered sector, are subject to the National Environmental Policy Act of 1969 (NEPA), are likely to require a total investment of more than \$200,000,000, and do not qualify for abbreviated authorizations or environmental review processes. They may also include construction projects in covered sectors that are subject to NEPA for which, due to their size and complexity, the applicable Federal agencies determine the FAST-41 coordination process and oversight would be beneficial. One of the first actions that FAST-41 requires agencies on the newly established Federal Permitting Improvement Steering Council (hereafter Council) to take is to establish an inventory of all existing covered projects that have pending Federal environmental reviews or authorizations. Agencies must then create a "specific searchable entry" for each project on the Federal Infrastructure Permitting Dashboard ([www.permits.performance.gov](http://www.permits.performance.gov))

The Atlantic Coast Pipeline Project has been identified as a potentially covered project by the Executive Director of the Federal Infrastructure Permitting Improvement Steering Council. FAST-41 requires that the lead agency establish a Coordinated Project Plan which shall include:



(1) a list of, and roles and responsibilities for, all entities with environmental review or authorization responsibility for the project; (2) "a permitting timetable setting forth a comprehensive schedule of dates by which all environmental reviews and authorizations, and to the maximum extent practicable, State permits, reviews and approvals must be made"; (3) "a discussion of potential avoidance, minimization, and mitigation strategies, if required by applicable law and known; and (4) "[p]lans and a schedule for public and tribal outreach and coordination, to the extent required by applicable law."

Forest Service submits these comments in response to FERC's request for comments on the Coordinated Project Plan.

### **I. Forest Service's Comments on List of Roles and Responsibilities**

FERC provided a draft permitting timetable of all responsible federal agencies attached as an appendix to FERC's Coordinated Project Plan. FERC's draft Appendix correctly identifies "U.S. Forest Service, George Washington NF and Appalachian Trail" and the "U.S. Forest Service, Monongahela NF" as responsible agencies.

### **II. Forest Service Does Not Concur With the Permitting Timetable**

FERC provided a draft permitting timetable of all NEPA reviews and Federal authorizations attached as an Appendix to FERC's Coordinated Project Plan. FERC's draft Appendix states that the final completion date for Forest Service's consideration of the special use permit application would be September 28, 2017. FERC states that the final completion date is calculated according to 18 CFR § 157.22 which states that "a final decision on a request for a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law." ***The draft permitting timetable is incorrect because a schedule is otherwise established by federal law.***

The U.S. Forest Service has its own administrative review process which must occur before the Forest Service makes a decision on the special use permit. Those processes are codified by federal law at 36 CFR §218 and 36 CFR §219. Those agency processes are, therefore, "established by federal law." These processes are pre-decisional and must occur before the Forest Service may issue a permit. Furthermore, the Forest Service cannot make decisions for authorizing the special use or approving any Land and Resource Management Plan (LRMP) amendments until the order is certificated.

Special use permit decisions and project-level LRMP amendments are subject to administrative review in 36 CFR §218, which requires a 45 day objection period. The agency would then provide a written response to the §218 objections within 45 days from the end of the §218 objection period, with an allowable extension of up to 30 days if needed.

Plan-level amendments are subject to 36 CFR §219.52, which requires a 60 day objection period. The agency would then provide a written response to the §219 objections within 90 days from the end of the §219 objection period. The reviewing officer can extend the §219 time period when necessary to provide adequate response to objections or to participate in discussions with the parties and there is no time limit associated with that extension.

The agency cannot make its final decisions for the special use permit or the LRMP amendments until the reviewing officer has responded in writing to all objectors and any concerns and instructions identified by the reviewing officer have been addressed. The agency would also require an additional 10 business days, excluding holidays and weekends, of coordination time between agency offices.

Additionally, the Forest Service's ability to adhere to any official timetable is also contingent upon receipt of adequate data and analysis, which depends on multiple parties also meeting deadlines. This includes data requests and responses from the Federal Energy Regulatory Commission as well as from the applicant. For example, the Forest Service requested site-specific stabilization designs at high-hazard locations, the results of which would determine if the project is consistent or could be made consistent with applicable Forest Plan direction. The lack of essential information hinders the Forest Service's ability to provide a definitive completion date for the decision.

The Forest Service decision for the special use permit is also contingent on the following conditions:

1. All consultations under the Endangered Species Act and the National Historic Preservation Act have been completed;
2. The Forest Service has all of the information needed to make these decisions. This would include requested data, analyses, and design criteria. All avoidance, minimization, and mitigation measures must have been identified, agreed upon, and disclosed to the public through the NEPA process.

For these reasons the Forest Service cannot at this time provide a definitive timetable that is not subject to several contingencies. These contingencies reflect the flexible timeline needed for the Forest Service to complete its objection processes under 36 CFR §218 and 36 CFR §219.

Section 41003(c)(2)(A) of FAST-41 requires the concurrence of each cooperating agency to establish a permitting timetable. Pursuant to section 41003(c)(2)(A), the Forest Service does not concur with the permitting timetable. The Forest Service requests that the permitting timetable be revised to state that the "Final Completion Date" for the Forest Service's special use permit authorization is "To Be Determined" or "TBD."

### **III. Forest Service's Comments on Potential Avoidance, Minimization, and Mitigation Strategies**

The Forest Service, to the extent necessary, will develop avoidance, minimization, and mitigation strategies on National Forest System lands that would be affected by the proposed Atlantic Coast Pipeline Project. A number of effects have not been analyzed due to outstanding data and analyses. Without having all of the information requested for the project, the Forest Service cannot provide detailed comments on potential avoidance, minimization, and mitigation strategies.

**IV. Forest Service's Comments on Plans and Schedule for Public and Tribal Outreach and Coordination**

Forest Service staff attended FERC' s scoping meeting and will attend the public DEIS meetings. Forest Service has and will continue to review the comments provided during these meetings and in the FERC docket. The Forest Service continues to engage in government to government consultation regarding National Forest System lands.

For questions, please contact Jennifer Adams, Special Project Coordinator, by phone at (540) 265-5114 or by email at [jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us).

Sincerely,

  
CLYDE THOMPSON  
Forest Supervisor