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December 14, 2018

VIA US MAIL

The Honorable Roy Cooper
Governor
State of North Carolina
116 West Jones Street
Raleigh, NC 27603

Re: Public Records Request Regarding the Atlantic Coast Pipeline

Dear Governor Cooper:

On behalf of the Blue Ridge Environmental Defense League (“BREDL”), and pursuant to N.C. Gen. Stat. § 132-1 *et seq.*, we again write to request that BREDL be provided all Administration records in your Office’s possession which are relevant to the Atlantic Coast Pipeline (ACP), including records regarding the Memorandum of Understanding (“MOU”) between ACP and the Governor’s, signed January 25, 2018. The date of such records to be provided by your Office are from January 1, 2017 through the date of this request. A copy of the original request made by BREDL is attached hereto as Exhibit A.

Background

As you are aware, on January 26, 2018, the North Carolina Department of Environmental Quality (“DEQ”) approved the Section 401 Water Quality Certification (“WQC”) for the ACP. According to DEQ, it conducted what it said was an “exhaustive review” of the project plans in which it requested additional application information from ACP on five (5) occasions. Leaving “no stone unturned,” DEQ Secretary Michael Regan publicly said the WQC carries with it more stringent requirements, including stream and wetland monitoring, horizontal directional drilling in certain areas to better protect the environment, and private water well testing before and after construction within 150 feet of any disturbed area, or 500 feet from blasting areas.

On the same day, you announced the creation of a 57.8 million dollar “mitigation” fund, which was to be financed entirely by the company set up to build the pipeline, which is a partnership between utility companies, including North Carolina's Duke Energy and Virginia's Dominion Energy. In the three-page memorandum of understanding (“MOU”) laying out the basics of this “mitigation” fund, your Office indicated the money would be held in escrow by a

third party, whom you would pick, and would be utilized for environmental mitigation, economic development, and renewable energy projects along the pipeline's route.

The move by your Administration shocked environmentalists, impacted community members and landowners, and understandably raised questions of "pay-for play" and "quid pro quo." However, soon after this announcement, Ford Porter, a spokesperson for your office, indicated "The (Atlantic Coast Pipeline builders), as they have in other states, provided these funds to be administered by the executive branch to ensure environmental mitigation and economic development in areas affected by this project. Gov. Cooper will continue to work to protect the environment and create good jobs across North Carolina."

Four days later, on January 30, 2018, Therese Vick, on behalf of BREDL, submitted a detailed records request to DEQ asking for records and information about the decision to approve the Section 401 Water Quality Certification. A request was also sent to the Governor's Office on February 8, 2018. This request asked your Office to provide documentation regarding the MOU entered into between your Office and ACP, and included, but not limited to, the following: calls, notes, text messages, faxes, meeting rosters, emails, letters, memoranda, meeting notes (handwritten or otherwise), calendar entries, audio/video records and contemporaneous notes both inter- and intra-agency (including communications with Duke Energy and other ACP partners, local governments, lobbyists, the North Carolina Department of Commerce, other economic development entities, legislators, and others).

The records request sent to DEQ remains largely incomplete, particularly the request for those records from senior management officials within DEQ. And, while your Office has complied in part with the request from BREDL, this also still remains incomplete. The few documents produced by your Office have been mostly irrelevant and immaterial to the request.

In early 2018, your Office published updated guidance ("Guidance") on public records request. The opening paragraph of this Guidance states:

The policy of the state of North Carolina is to allow public access to the activities of government. Governor Roy Cooper believes following the law in providing access to records and meetings is an important part of the everyday duties of office holders and government employees, as well as appointed and elected members of government boards and commissions.

In this same Guidance, your Office went on to say, "State employees and officials conduct the people's business. Our responsibility rests with following the law and providing members of the public with the information to which they are legally and ethically entitled." As such, BREDL believes one of the most important reasons for open government is to facilitate informed citizen participation. A government which works in the open and engages with the public makes better decisions.

Legal Basis for Request

N.C. Gen. Stat. § 132-1 establishes a wide-ranging definition of the term “public record.” Likewise, N.C. Gen. Stat. § 132-6 entitles any person to examine and have a copy of any such public record. The North Carolina Supreme Court has concluded that these statutory rights extend to all documents meeting the definition of public record, unless the General Assembly has enacted a statute that limits or denies public access to a category of record. *News and Observer Publ'g Co., Inc. v. Poole*, 330 N.C. 465, 412 S.E.2d 7 (1992).

N.C. Gen. Stat. § G.S. 132-1 extends the reach of the public records statute to every agency of state and local government in North Carolina. The Section defines the covered agencies to include “every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.”

Under N.C. Gen. Stat. § 132-6, you are required to furnish copies “as promptly as possible.” If you foresee any circumstances, which will prevent you from promptly reproducing these records, please let us know when the requested documents or inspection will be available. Should you deny any portion, or all, of this request, please provide a written explanation of the reason(s) for your denial, including a citation to each specific statutory exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. Likewise, should you conclude portions of the records requested by BREDL are exempt from disclosure, please release the remainder of such records for inspection and copying, redacting only the portion or portions that you claim are exempt.

Should there be a continued denial of access to the public records requested by the Governor’s Office, BREDL may be forced to file an action under N.C. Gen. Stat. § G.S. 132-9. This Section allows for the compelling of a public agency to provide the requested records. A claimant who substantially prevails in a claim under the statute is also entitled to recover attorneys’ fees from the public agency.

Conclusion

We strongly request your continued commitment to “providing members of the public with the information to which they are legally and ethically entitled.” As such, and in light of the foregoing, again ask for your prompt fulfillment of the BREDL request for all Administration records in you Office’s possession which are relevant to ACP, including all records arising out of or related to the MOU between ACP and the Governor’s Office.

It is not our desire to recommend that BREDL consider litigation in order to obtain the requested documents. We are hopeful we can work through your Office and staff to promptly determine the status of the response to this request and to obtain all requested documents in a prompt and timely fashion.

Please provide our office with your written response no later than Friday, December 21, 2018.

Sincerely,

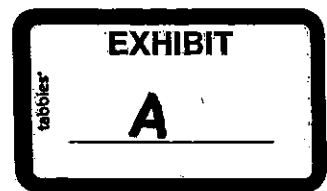
A handwritten signature in black ink that reads "Seth E. Barefoot". The signature is written in a cursive style and is followed by a horizontal line that extends to the right.

Seth E. Barefoot

Cc:

Michael S. Regan, Secretary
North Carolina Department of Environmental Quality
217 West Jones Street
Raleigh, NC 27603

Bill Lane, General Counsel
North Carolina Department of Environmental Quality
1611 Mail Service Center
Raleigh, NC 27699



Blue Ridge Environmental Defense League

www.BREDL.org 4617 Pearl Rd Raleigh NC 27610 (919) 345-3673 therese.vick@gmail.com

February 8, 2018

The Honorable Roy Cooper
Governor
State of North Carolina
116 West Jones Street
Raleigh, North Carolina 27603

VIA EMAIL

Re: Public Records Request Atlantic Coast Pipeline

Dear Governor Cooper:

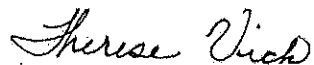
On behalf of Blue Ridge Environmental Defense League (BREDL), and pursuant to North Carolina General Statute §132, I am requesting that I be provided all Administration records from January 1, 2017 through the date of this request pertinent to the Atlantic Coast Pipeline (ACP), including records regarding the Memorandum of Understanding between your office and the ACP, signed January 25, 2018.

This should include documentation of interactions such as calls, call notes, texts, faxes, meeting rosters, emails, letters, memoranda, meeting notes (handwritten or otherwise), calendar entries, audio/video records and contemporaneous notes both inter and intra agency (including communications with Duke Energy and other ACP partners, local governments, lobbyists, the North Carolina Department of Commerce, other economic development entities, legislators, and others described below). Please also include any interactions with:

1. McGuire Woods
2. Lee Lilley
3. David McGowan
4. North Carolina Petroleum Council
5. American Petroleum Council
6. Senator Dan Blue

Considering the intense public interest in this issue, it is our expectation that the Administration will expedite this request.

Sincerely,



Therese Vick

North Carolina Healthy, Sustainable Communities/Coal Ash Campaign Coordinator

Cc: Attorney General Josh Stein

Louis Zeller, Executive Director Blue Ridge Environmental Defense League

John Runkle, Esquire