
The Appalachian Trail Is Now A Battlefield In The Pipeline Conflict

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The latest battlefield in the American pipeline wars is one of the most celebrated, venerable and scenic places in the United States - the Appalachian Trail. Stretching about 2,200 miles from Maine to Georgia, the Appalachian Trail - which is managed by the National Park Service, the United States Forest Service, and the non-profit Appalachian Trail Conservancy - is reportedly the longest trail used exclusively for hiking in the world.

The Trail is now at issue because of something called the Atlantic Coast Pipeline, which would run approximately 600 miles from West Virginia to North Carolina to deliver natural gas from the Marcellus Basin to the South. The pipeline needs to cross the Appalachian Trail in order to fulfill its basic purpose.

At a cost of over \$8 billion, the pipeline is over 90% complete. If and when finished, it will carry 1.5 billion cubic feet of gas per day, allowing the Marcellus gas to be marketed and to provide a reliable domestic supply for large parts of Virginia and North Carolina.

However, construction on the pipeline has been stopped since April 2019 by a 4th Circuit United States Court of Appeals ruling pertaining to the Appalachian Trail. While rather technical, and narrowly confined as an issue to national land, the 4th Circuit ruled, in essence, that even though the owners of the pipeline had already received permits from the United States Forest Service to subterraneously cross the Appalachian Trail with the pipeline, it actually was the National Park Service that needed to issue any permits as it controls "lands in the National Park System."

The Trump Administration and Dominion Energy, chief developer of the pipeline, concede that when a person hikes and bikes on the trail he/she is on land controlled by the National Park System, but argue that the underlying ground is within a national forest. Therefore, their position is that permits for any subterranean pipelines or other underground matters are controlled by the Forest Service and not the Park Service.

On February 24, the United States Supreme Court heard arguments on the case. Ironically, over 50 existing pipelines already cross the Appalachian Trail at various locations, but opponents say they either are on state land or private land, or had received permits that predate the 1968 federal designation of the Appalachian Trail, and are, therefore, not relevant or precedential to the present dispute.

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In reality, the case is less about the actual merits and more of a proxy war between those who want to build out America's natural gas infrastructure and those who want to stop all such projects at all cost. The Marcellus Region of Appalachia contains so much gas that prices have plummeted, partially because the gas simply cannot find its way to market. Pipelines like Atlantic Coast are a way to unlock that potential and provide people in the South with a ready, inexpensive, and relatively local supply of energy.

Nevertheless, opponents question the need for the pipeline and want to stop any buildout of the natural gas infrastructure as part of the broader fight against fossil fuels and climate change. Currently, Canada is in the middle of similar pipeline battles that have ground natural gas projects in that country to a halt, threatened the country's entire business climate, strained relations with indigenous tribes, threatened the stability of the government of Prime Minister Justin Trudeau, and started a nascent separatist movement from the resource rich Province of Alberta. Is the United States moving down a similar path?

Judging from the tone of the questions asked by the Supreme Court Justices at the February 24 hearing, most observers are betting that the United States will not follow Canada's lead. They believe that the Court will overturn the lower court and will approve the Atlantic Coast Pipeline project. They note that even generally liberal Justice Stephen Breyer has apparent difficulty with the breadth of the opponent's argument that the National Park Service has the right to control the land to the center of the earth.

However, approval of the current permitting by the Supreme Court will not end the matter entirely. Some other approvals will still be necessary to complete the pipeline by its estimated completion date of 2021. It will, however, go a long way toward charting a path of rationality different from the terminal roadblock that currently exists north of the United States border.

ATTORNEYS MENTIONED

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