UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

August 24, 2018

Return Receipt Requested
Certified Mail #: 7015 3010 0001 1267 0589

In Reply Refer to:
EPA File No: 01R-18-R3

David Paylor
Director
Virginia Department of Environmental Quality
111 East Main Street
Richmond, VA 23218

Re: Rejection without Prejudice of Administrative Complaint

Dear Mr. Paylor:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is in receipt of a complaint against the Virginia Department of Environmental Quality (VDEQ), dated June 19, 2018, alleging discrimination based on race and color in violation of Title VI of the Civil Rights Act of 1964. The Complaint alleges that VDEQ discriminated on the bases of race and color in issuing permits and certifications for the proposed Atlantic Coast Pipeline (ACP) as part of the permitting process. For the reason identified below, ECRCO is rejecting this complaint without prejudice and closing this case as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

In general, ECRCO will accept, reject or refer a complaint after considering the four jurisdictional factors described above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint allegation. ECRCO has learned that work on the ACP has been halted by the Federal

Energy Regulatory Commission (FERC). In an August 10, 2018 letter from Terry Turpin, Director of the Office of Energy Projects for FERC, to Matthew Bley of Dominion Energy Transmission, FERC noted that ACP had not obtained the requisite permits and therefore ordered "that construction activity along all portions of the ACP and Supply Header Project and in all work areas must cease immediately…[1]"

Per ECRCO's Case Resolution Manual (CRM), at Section 2.6, after careful consideration, ECRCO cannot accept this complaint for investigation because the discrimination alleged is not "ripe" for investigation. Specifically, two permits issued by different federal agencies must be modified before there will be a FERC final order authorizing construction of the pipeline. Given the August 10, 2018 Order by FERC, ECRCO will not, at this time, proceed on a complaint that does not appear to be ripe for review.

As stated in the CRM, the Complainant may refile this complaint within 60 days of a subsequent act or event that raises an allegation of discrimination. If the complaint is re-filed, ECRCO will then proceed with its preliminary review to determine acceptance, rejection, or referral.

If you have questions about this letter, please contact Case Manager Debra McGhee, at (202) 564-4646, via email at McGhee.Debra@epa.gov, or by mail at U.S. EPA, Office of General Counsel, Mail Code 2310A, Room 2524, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460-1000.

Sincerely,

Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region 3

1 August 10, 2018 letter from Terry Turpin, FERC, to Matthew Bley, Dominion Energy Transmission, Inc. Re: Notification of Stop Work Order.