ORAL ARGUMENT HAS NOT BEEN SCHEDULED

In the United States Court of Appeals for the District of Columbia Circuit

Nos. 17-1271, 18-1002 & 18-1006 (consolidated)

APPALACHIAN VOICES, *ET AL.*,
Petitioners,
v.
FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITIONS FOR REVIEW OF AN ORDER OF THE
FEDERAL ENERGY REGULATORY COMMISSION

RESPONDENT'S OPPOSITION TO MOTIONS FOR STAY AND TO PETITION UNDER ALL WRITS ACT

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GLOSSARY

Blue Ridge	Movant-Petitioner Blue Ridge Environmental Defense League
Certificate Order	*Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (Oct. 13, 2017), *reh'g pending*
Commission	Federal Energy Regulatory Commission
EIS	Final environmental impact statement
Environmental Statement	Final environmental impact statement
FERC	Federal Energy Regulatory Commission
Historic Preservation Act	National Historic Preservation Act
Mountain Valley	Project applicant Mountain Valley Pipeline, LLC
Movants-Petitioners	Collectively, Appalachian Voices, *et al.* (Movants-Petitioners in Docket No. 17-1271 and 18-1006) and Blue Ridge (Movant-Petitioner in Docket No. 18-1002)
NEPA	National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq*
Project	Proposed Mountain Valley pipeline project
Tolling Order	*Mountain Valley Pipeline, LLC*, Docket No. CP16-10-001 (Dec. 13, 2017)

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INTRODUCTION

Movants-Petitioners Appalachian Voices, *et al.*, and Blue Ridge Environmental Defense League ("Blue Ridge") (collectively, "Movants-Petitioners") seek the extraordinary remedy of indefinitely delaying the Mountain Valley Pipeline project ("Project"). They fail, however, to establish the extraordinary circumstances necessary to justify their requests.

The Federal Energy Regulatory Commission ("FERC" or "Commission") recently granted a certificate of public convenience and necessity for the Project. *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (Oct. 13, 2017) ("Certificate

Order"), *reh'g pending*. The Commission determined in its expert judgment, after thoroughly considering and balancing competing values, that this interstate natural gas pipeline project is in the public interest. Requests for rehearing of the Certificate Order, including those by Movants-Petitioners, are pending before the Commission.

The requests for stay ignore half of the Commission's public interest balancing -- whether the need for, and benefits from, the Project outweigh potential adverse impacts. The Commission found that the Project will benefit the public, as it will provide firm natural gas transportation service from the Marcellus and Utica supply areas to markets in the Northeast, Mid-Atlantic, and Southeast regions. Certificate Order PP 6, 41, 64. As to the other half of the balance, Movants-Petitioners ignore the array of Commission-directed mitigation measures to eliminate or minimize environmental impacts.

Consistent with its responsibilities under the Natural Gas Act and the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq* ("NEPA"), the Commission considered all views (including Movants-Petitioners') in both its Certificate Order and its comprehensive environmental impact statement for this Project. As it must be under the statutes it administers, the Commission is sensitive to all perspectives, whether economic or environmental in nature. As the lengthy and comprehensive final Environmental Impact Statement shows, the

Commission was particularly sensitive to environmental concerns here. And, as contemplated by the Natural Gas Act, to the extent Movants-Petitioners and other parties believe the Commission has been insensitive or inattentive to their concerns, they can and have requested agency rehearing, which the Commission will address in a pending substantive order on rehearing. The Commission has not yet made a final, judicially reviewable decision.

The requested stay would upset the Commission's public interest balance and imperil the Project and, therefore, must be denied. This and other courts have repeatedly rejected similar efforts to halt the effectiveness of the Commission's natural gas infrastructure decisions prior to judicial review on the merits. In fact, in the past six years, courts have denied all 19 emergency requests for stays of the effectiveness of Commission natural gas certificate orders, including:

- *New York Dept. of Environ. Conserv. and Protect Orange County v. FERC*, Nos. 17-3770 and 17-3966 (2d Cir. Dec. 7 and 15, 2017) (denying stays of pipeline construction based on Clean Water Act waiver and bald eagle protection);

- *Orus Berkley, et al. v. Mountain Valley Pipeline and FERC*, No. 7:17-cv-00357 (W.D. Va. Dec. 11, 2017) (denying preliminary injunction to stop pipeline construction based on constitutional eminent domain objections), *on appeal*, No. 18-1042 (4th Cir. filed Jan. 11, 2018);

- *Allegheny Defense Project, et al. v. FERC*, No. 17-1098, *et al.* (D.C. Cir. Nov. 8, 2017) (denying stay of pipeline construction based on challenge to FERC's indirect impacts analysis);

- *Adorers of the Blood of Christ, et al. v. FERC*, No. 5:17-cv-3163 (E.D. Pa. Sept. 28, 2017) (denying preliminary injunction to stop pipeline

construction and operation), *on appeal*, No. 17-3163 (3d Cir. Oct. 13, 2017) (denying injunction pending appeal);

- *Sierra Club, et al. v. FERC*, No. 16-1329 (D.C. Cir. Nov. 17, 2016) (denying stay of pipeline construction based on challenge to FERC's indirect impacts analysis); and

- *City of Boston, et al. v. FERC*, No. 16-1081 (D.C. Cir. Oct. 28, 2016) (denying stay of pipeline in-service date based upon challenge, in part, to FERC's cumulative impacts analysis).[1]

Movants-Petitioners have not presented any legitimate basis for this Court to reach a different decision here.

BACKGROUND

The Certificate Order issued two conditional certificates of "public convenience and necessity" under section 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c). The first certificate authorized Mountain Valley Pipeline, LLC ("Mountain Valley") to build and operate the Project; the second certificate

[1] The other twelve court orders denying stays of FERC natural gas infrastructure orders are: *Catskill Mountainkeeper, et al. v. FERC*, No. 16-345 (2d Cir. Feb. 24, 2016); *In re Clean Air Council*, No. 15-2940 (3d Cir. Dec. 8, 2015); *Town of Dedham v. FERC*, No. 1:15-cv-12352, 2015 WL 4274884 (D. Mass. July 15, 2015); *EarthReports, Inc. v. FERC*, No. 15-1127 (D.C. Cir. June 12, 2015); *In re Stop the Pipeline*, No. 15-926 (2d Cir. Apr. 21, 2015); *In re Del. Riverkeeper Network*, No. 15-1052 (D.C. Cir. Mar. 19, 2015); *Minisink Residents for Envt'l Pres. and Safety v. FERC*, No. 12-1481 (D.C. Cir. Mar. 5, 2013); *Feighner v. FERC*, No. 13-1016 (D.C. Cir. Feb. 9, 2013); *Del. Riverkeeper Network v. FERC*, No. 13-1015 (D.C. Cir. Feb. 6, 2013); *In re Minisink Residents for Envt'l Pres. and Safety*, No. 12-1390 (D.C. Cir. Oct. 11, 2012); *Coal. for Resp. Growth & Res. Conservation v. FERC*, No. 12-566 (2d Cir. Feb. 28, 2012); and *Summit Lake Paiute Indian Tribe and Defenders of Wildlife v. FERC*, Nos. 10-1389 & 10-1407 (D.C. Cir. Jan. 28, 2011 & Feb. 22, 2011).

authorized Equitrans, L.P. to modify its transportation system to provide additional service from western Pennsylvania to an interconnect with the Project in West Virginia. Certificate Order PP 1-2. Movants-Petitioners' motions and petition for stay challenge only the conditional certificate granted to Mountain Valley Pipeline.

The Certificate Order authorizes Mountain Valley, upon satisfying necessary environmental conditions, to construct new facilities to transport approximately two million dekatherms of natural gas per day from Wetzel County, West Virginia to Pittsylvania County, Virginia, to transport natural gas produced in the Appalachian Basin to markets in the Northeast, Mid-Atlantic, and Southeast to meet increasing natural gas demand in those markets and also to markets along Mountain Valley's pipeline system. Certificate Order PP 1, 6, 41, 56; EIS at 1-8.

The Commission balanced the Project's public benefits against its potential adverse consequences. *See* Certificate Order PP 30-31, 60. The Commission determined that the record established there was a need for the Project, as Mountain Valley had entered into long-term, firm precedent agreements for all of the Project's two million dekatherms of capacity. *Id.* at P 41. Furthermore, the Commission found that end users generally will benefit from the Project because it will provide gas infrastructure to help ensure future domestic energy supplies and will enhance the pipeline grid by connecting sources of natural gas to Northeast, Mid-Atlantic, and Southeast markets. *Id.*

In addition to its need assessment under the Natural Gas Act, the Commission conducted a detailed environmental review consistent with its obligations under the National Environmental Policy Act. This review resulted in a 930-page final environmental impact statement ("Environmental Statement" or "EIS"), available at https://elibrary.ferc.gov, FERC Docket No. CP16-10, accession no. 20170623-4000.

Before issuing the Environmental Statement, the Commission considered more than 400 oral comments made at 13 public comment sessions and more than 2,000 written comments. Certificate Order PP 122-23, 127-28. While the Commission found that the Project would result in some adverse environmental impacts, it concluded that virtually all of those impacts would be reduced to less-than-significant levels by implementing 33 mandatory conditions to avoid, minimize, and mitigate potential environmental impacts associated with the Project. *See id*. P 130 and App. C.

The Certificate Order and Environmental Statement addressed numerous issues, but Movants-Petitioners raise just a few merits issues in their stay motions and petition to this Court. All Movants-Petitioners assert is that: there was insufficient evidence of market demand for the Project (App. Voices Mot. 6-13); the Commission failed to evaluate reasonable alternatives to the Project (*id.* 14-16); and the Commission failed to adequately analyze the Project's climate impacts

(*id.* 16-18). Blue Ridge additionally asserts that the Commission did not adequately evaluate the Project's historical and cultural resource impacts. Blue Ridge Mot. 3-15. The Commission addressed all these issues in its Certificate Order and Environmental Statement. *See infra* pp. 12-28.

Movants-Petitioners and other parties have requested rehearing and have asked the Commission to stay the Project. Those requests are pending before the Commission. On December 13, 2017, the Secretary of the Commission issued a procedural order tolling the time period for the Commission to issue an order addressing the matters raised in the rehearing requests. *Mountain Valley Pipeline, LLC*, Docket No. CP16-10-001 (Dec. 13, 2017) ("Tolling Order") (Exh. D to App. Voices Mot.) ("[R]ehearing of the Commission's order is hereby granted for the limited purpose of further consideration;" "Rehearing requests of the [Certificate Order] will be addressed in a future order.").

ARGUMENT

Movants-Petitioners seeks judicial intervention too soon. The Commission has not yet acted on the merits of the recently-filed requests for rehearing of its Certificate Order and, thus, has not yet issued a final order in this proceeding.

Moreover, Movants-Petitioners have not justified their requests for the extraordinary remedy of a stay. *See Munaf v. Geren*, 553 U.S. 674, 691 (2008) (stay pending appeal "is an extraordinary and drastic remedy; it is never awarded

as of right"); *Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985) (petitions for stay under All Writs Act must "satisfy the normal requirements . . . for all extraordinary relief -- i.e., the well established requirements that we routinely apply to motions for stay pending appeal"). To obtain such extraordinary relief, Movants-Petitioners must establish: (1) a strong showing that they are likely to prevail on the merits of their appeals; (2) that, without such relief, they will be irreparably injured; (3) a lack of substantial harm to other interested parties; and (4) that the public interest favors a stay. *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc*., 559 F.2d 841, 843 (D.C. Cir. 1977). Courts "must balance the competing claims of injury and must consider the effect . . . of the granting or withholding of the requested relief," and must "pay particular regard for the public consequences . . . ." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 9 (2008) (internal quotation omitted).

I. Movants-Petitioners Seek Extraordinary Relief From A Non-Final FERC Order

This Court has jurisdiction to review "only final orders of the Commission." *Transwestern Pipeline Co. v. FERC*, 59 F.3d 222, 226 (D.C. Cir. 1995). As this Court has clarified, the "presumption that Congress intends judicial review of administrative action applies . . . *only* to final agency action." *Pub. Citizen, Inc. v. FERC*, 839 F.3d 1165, 1171 (D.C. Cir. 2016) (internal quotation and citation omitted). "Final agency action is that which 'mark[s] the consummation of the

agency's decisionmaking process.'" *Id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (alteration by Court)).

The Certificate Order is not final agency action. Movants-Petitioners' and other parties' recent requests for Commission rehearing of the Certificate Order remain pending. *See, e.g.*, *Clifton Power Corp. v. FERC*, 294 F.3d 108, 111-12 (D.C. Cir. 2002) (petition for review filed before rehearing order issues is "incurably premature" and "must be dismissed"); *Papago Tribal Utility Auth. v. FERC*, 628 F.3d 235, 238-39 & n.11 (D.C. Cir. 1980) (explaining that a party must file for Commission rehearing before it may file a petition for review, and that the order denying requests for rehearing is the final, reviewable agency order).

Appalachian Voices' contention that the rehearing requests are not pending, *see* Mot. 3-6, does not conjure finality. This and other courts have uniformly determined that Natural Gas Act section 19(a), 15 U.S.C. § 717r(a), does not require the Commission to act on the merits of a rehearing request within 30 days. Rather, the Commission appropriately "acts upon the application for rehearing" by providing notice, as it did here (*see* Tolling Order, Exh. D to App. Voices Mot.), within that 30-day timeframe that it intends to further consider a rehearing request. *See Cal. Co. v. FPC*, 411 F.2d 720, 721 (D.C. Cir. 1969) ("the Commission has power to act on applications for rehearing beyond the 30-day period so long as it gives notice of this intent"); *City of Glendale, Cal. v. FERC*, No. 03-1261, 2004

WL 180270, at *1 (D.C. Cir. Jan. 22, 2004) ("A petition for review of an agency order filed while an administrative request for reconsideration of the same order remains pending is incurably premature. Nor is there merit to petitioner's contention that this court should treat FERC's orders tolling the period for resolving petitioner's requests for agency rehearing as effectively denying rehearing; the tolling orders do not resolve the rehearing requests but simply extend the time to consider them.").[2]

Moreover, this Court recently denied an emergency motion to stay a different pipeline project (the Atlantic Sunrise project) filed by Sierra Club (a movant-petitioner here) and other parties, because the Court determined -- after considering not only issues raised in the stay motion there, but also issues raised in motions to dismiss there, including the tolling order issue raised here -- that the movants there had not satisfied the "stringent requirements" for a stay. *Allegheny Defense Project, et al.*, Nos. 17-1098, et al. (D.C. Cir. Nov. 8, 2017). The Court should reach the same conclusion here.

[2] Courts of appeals in other circuits have uniformly reached the same conclusion. *See Kokajko v. FERC*, 837 F.2d 524, 525 (1st Cir. 1988); *Gen. Am. Oil Co. v. FPC*, 409 F.2d 597, 599 (5th Cir. 1969); *see also Del. Riverkeeper Network v. FERC*, 243 F. Supp. 3d 141, 145-46 (D.D.C. 2017) ("The D.C. Circuit has held that section 717r's language requiring the Commission to take action with regard to a rehearing request within 30 days, or have it deemed denied, does not require FERC to act on the merits.") (collecting cases), *on appeal*, D.C. Cir. No. 17-5084.

Movants-Petitioners' primary concern, underlying both the motions and the All Writs petition, is that pipeline construction can commence before agency rehearing and the judicial review process are complete. But Congress designed the Natural Gas Act to produce that default outcome. Natural Gas Act section 19(c), 15 U.S.C. § 717r(c), specifically provides that "[t]he filing of an application for rehearing under [Natural Gas Act section 19(a), 15 U.S.C. § 717r(a)] shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order." *See also Pub. Citizen*, 839 F.3d at 1174 (explaining in the context of the analogous FERC-administered Federal Power Act that, where judicial review is limited due to an operation of law, "[a]ny unfairness associated with this outcome inheres in the very text of the [statute]. Accordingly, it lies with Congress, not this Court, to provide the remedy."); *accord Telecomms. Research and Action Ctr. v. FCC*, 750 F.2d 70, 79 (D.C. Cir. 1984) ("Postponing review until relevant agency proceedings have been concluded 'permits an administrative agency to develop a factual record, to apply its expertise to that record, and to avoid piecemeal appeals.'").

"[R]elief under the All Writs Act . . . is an 'extraordinary remedy that may be invoked only if the statutorily prescribed remedy' is 'clearly inadequate.'" *Reynolds Metals*, 777 F.2d at 762 (quoting *In re GTE Service Corp.*, 762 F.2d 1024, 1027 (D.C. Cir. 1985)). "[T]he All Writs Act does not authorize a court to

circumvent bedrock finality principles[.]" *In re Murray Corp.*, 788 F.3d 330, 335 (D.C. Cir. 2015) (citing *Penn. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34 (1985), and *Schlagenhauf v. Holder*, 379 U.S. 104 (1964)).

II. Movants-Petitioners Cannot Show A Likelihood Of Success On The Merits

Movants-Petitioners cannot meet the "'independent, free-standing requirement'" to demonstrate a likelihood of success on the merits. *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (quoting *Winter*, 555 U.S. at 22). In the context of a National Environmental Policy Act claim, a petitioner must "clearly establish[]" a violation to obtain injunctive relief. *Cuomo v. NRC*, 772 F.2d 972, 976 (D.C. Cir. 1985) (finding petitioner failed to demonstrate a "substantial case on the merits").

Commission action under the Natural Gas Act is entitled to a high degree of deference. *See Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1308 (D.C. Cir. 2015) (because the grant or denial of a certificate of public convenience and necessity is "peculiarly within the discretion of the Commission," the Court does not "substitute its judgment for that of the Commission"). The same is true for Commission action under NEPA. *See Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 377-78 (1989). If an agency's NEPA "decision is fully informed and well-considered, it is entitled to judicial deference and a reviewing

court should not substitute its own policy judgment." *EarthReports v. FERC*, 828 F.3d 949, 954-55 (D.C. Cir. 2016).

Here, the Commission satisfied its Natural Gas Act and NEPA responsibilities, and its decisions are supported by substantial record evidence, as is demonstrated by the 930-page Environmental Statement considering the proposed Project. In contrast to this extensive analysis, Movants-Petitioners focus on a few discrete elements of the Certificate Order: public need for the Project; consideration of alternatives; downstream climate impacts associated with the transported gas; and consideration of historical and cultural resource impacts. Movants-Petitioners have not demonstrated that they are likely to succeed on any of these claims.

A. The Commission Reasonably Determined There Is A Public Need For The Project

Movants-Petitioners argue that the Commission lacked substantial evidence to support its determination that there is a public need for the Project. App. Voices Mot. 6-14. In their view, the precedent agreements for 100 percent of the Project's capacity cannot be sufficient, under the Commission's pipeline certification Policy Statement,[3] to establish a need for the Project, particularly since the precedent

[3] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

agreements were entered into with the Pipeline's affiliates. App. Voices Mot. 7-10, 12-14. The Commission, interpreting its own Policy Statement, reasonably found otherwise.

Before the Policy Statement issued, new pipeline project proponents were permitted to demonstrate project need only by showing they had contractual commitments for at least 25 percent of the proposed project's capacity. Certificate Order n.44 (citing Policy Statement, 88 FERC at 61,743). The Policy Statement, by contrast "allow[s] an applicant to rely on a variety of relevant factors to demonstrate need, rather than continuing to require that a percentage of the proposed capacity be subscribed under long-term precedent or service agreements." *Id.* P 40 (citing Policy Statement, 88 FERC at 61,747). "These factors might include, but are not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the capacity currently serving the market." *Id.* (citing Policy Statement, 88 FERC at 61,747).

The Commission explained that, while the Policy Statement broadened the types of evidence certificate applicants may present to show public need for their projects, it did not require these additional types of evidence to be presented. *Id.*; *see also Minisink Residents for Envtl. Pres. & Safety v. FERC*, 762 F.3d 97, 111 n.10 (D.C. Cir. 2014) (rejecting contention that FERC violated the Policy

Statement by finding precedent agreements established public need because neither the Policy Statement nor any precedent construing it suggests that it requires, rather than permits, the Commission to assess project need by looking beyond contracts with shippers), *cited in* Certificate Order P 45 & n.56; *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) (finding that market need showing can be met through precedent agreements). In fact, the Policy Statement established that, although precedent agreements are no longer required, they remain significant evidence of project need or demand. Certificate Order P 40 (citing Policy Statement, 88 FERC at 61,748); *see also Minisink*, 762 F.3d at 111 n.10 ("the policy statement specifically recognizes that such agreements 'always will be important evidence of demand for a project.'") (quoting Policy Statement, 88 FERC at 61,748)); *Sierra Club*, 867 F.3d at 1379 (evidence showing that 93 percent of the project's capacity had been contracted for satisfied market need showing).

The record here shows that Mountain Valley entered into long-term, firm precedent agreements for all of the Project's capacity. Certificate Order P 41. Moreover, Mountain Valley must file a written statement affirming that final service contracts for all of the Project's capacity had been executed before Project construction can commence. *Id.* at P 41, Ordering P (C)(4).

The Commission also explained that, as long as precedent agreements are binding, it does not distinguish between those entered into with affiliates or non-affiliates in determining public need. Certificate Order P 45 & nn. 53, 57 (citing, *e.g.*, *Greenbrier Pipeline Co., LLC*, 101 FERC ¶ 61,122 P 59 (2002), *reh'g denied*, 103 FERC ¶ 61,024 (2003); *Millennium Pipeline Co., L.P.*, 100 FERC ¶ 61,277 P 57 (2002)); Policy Statement, 88 FERC at 61,744, 61,748). As the Commission pointed out, "[a]n affiliated shipper's need for new capacity and its obligation to pay for such service under a binding contract are not lessened just because it is affiliated with the project sponsor." Certificate Order P 45.

The Commission also addressed Movants-Petitioners' assertion that the two utilities that signed precedent agreements will be able to pass the costs of their agreements through to their retail customers. App. Voices Mot. 13. The Commission explained that, whether the two utilities will be able to pass through these costs is not an issue within the Commission's jurisdiction, but a matter to be determined by the relevant state utility commissions. Certificate Order P 53.

Next, Movants-Petitioners mistakenly contend that the Commission "ignored" evidence showing a lack of market need for the Project's capacity. App. Voices Mot. 10-12. The Environmental Statement considered whether there already was sufficient capacity available on other pipelines, and determined there was insufficient capacity to and from the necessary receipt and delivery points on

those pipelines. Certificate Order P 43 (citing EIS at 3-1 to 3-4). Furthermore, given the uncertainty associated with long-term demand projections, like those in the various studies cited by the parties, the Commission found the long-term firm service precedent agreements here are better evidence of demand. *Id.* at P 42; *see also id.* at P 41 (finding that the prospective shippers have determined there is a market (a variety of end users) for the gas they will ship on the Project, that the Project is their preferred means to deliver or receive that gas, and that the precedent agreements are the best evidence that additional gas will be needed in the markets the Project is intended to serve); *id.* at n.47 (noting that the cited studies' findings were overstated). Moreover, the Commission noted, no existing or proposed pipelines or pipeline customers asserted that the Project would cause them to be burdened with the costs of unused capacity. *Id.* at PP 42, 56.

B. The Commission Reasonably Considered Alternatives To The Project

Movants-Petitioners argue that the Commission violated NEPA by failing to adequately consider co-locating the pipeline in the same corridor as the Atlantic Coast Pipeline. App. Voices Mot. 14-16. They cannot demonstrate a likelihood of success on this claim. As the Environmental Statement and Certificate Order show, the Commission thoroughly considered this and other Project alternatives. EIS 3-1 to 3-119 (evaluating "no action" alternative, alternative modes of natural gas transportation, existing natural gas pipeline system alternatives, proposed

natural gas pipeline system alternatives, major route alternatives, and route variations); Certificate Order PP 297-306.

The Environmental Statement considered two co-location alternatives related to the Atlantic Coast Pipeline. First, it considered the "one pipe" alternative, under which the Project's natural gas volumes would be transported together with Atlantic Coast Pipeline's volumes in a single pipeline along Atlantic Coast Pipeline's route. EIS 3-14 to 3-16; Certificate Order P 299. If this alternative used Atlantic Coast Pipeline's single 42-inch diameter pipeline, significant additional compression (eight additional new compressor stations -- more than the total compression of the Project and Atlantic Coast Pipeline combined) would be required, which could triple air quality impacts compared to constructing and operating both the Project and the Atlantic Coast Pipeline as proposed. EIS 3-15; Certificate Order P 300 & n.298. In addition, more laterals would need to be constructed to reach the Project's taps, impacting many new landowners. EIS 3-15; Certificate Order P 300. Also, bypassing and modifying the Project's receipt or delivery points might prevent Mountain Valley from providing contracted services to the Project's shippers, which is the purpose of the Project. EIS 3-15; Certificate Order P 300.

If, instead, the "one pipe" alternative used a larger diameter pipeline than the 42-inch diameter pipeline proposed for the Atlantic Coast Pipeline, 30 feet or more

of additional construction right-of-way over the entire length of the pipeline route would be required, and about 30 percent more soil would displaced. EIS 3-15; Certificate Order P 301 & n.299. Because topography issues would prevent a larger right-of-way in many areas along the route, the Commission found this alternative was technically infeasible. EIS 3-16; Certificate Order P 301.

Accordingly, the Commission determined that the "one-pipe" alternative was not technically feasible or practical, and that it did not offer a significant environmental advantage over the proposed Project. Certificate Order P 301.

The Environmental Statement also considered a "two-pipe, one right-of-way" alternative under which the Project would be located adjacent to the Atlantic Coast Pipeline. EIS 3-29 to 3-32; Certificate Order P 299. The Environmental Statement found that this alternative would provide some environmental benefits, but would have significant disadvantages as well. EIS 3-29 to 3-32; *see also id.* at 3-31 (table comparing environmental impacts of Mountain Valley's proposal and this co-location alternative). Specifically, this longer-route alternative would: disturb about 101 more acres during construction; affect 28 more landowner parcels; and cross 15.6 more miles of National Forest System lands, 36 more perennial waterbodies, more wetlands (including 1,256 more feet of forested wetlands), more major waterbodies, and nine more miles of karst terrain. *Id.* at 3-32. Moreover, topography and space issues along many areas of this alternative

route would present significant constructability problems, likely rendering this alternative technically infeasible. *Id.* Because there is insufficient space along the narrow ridgelines to accommodate the two parallel pipelines in many areas along this alternative route, side slope or two-tone construction techniques would be necessary, and more acres would be disturbed for additional temporary work spaces to safely accommodate equipment, personnel, and spoil storage. *Id.*

After considering all these facts, the Environmental Statement concluded that this co-location alternative would not provide a significant environmental advantage over the proposed pipeline route. *Id.* The Commission agreed. Certificate Order PP 302, 304.

Movants-Petitioners assert that "FERC only gave cursory attention to" the "co-location options." App. Voices Mot. 16. The record establishes, however, that the Commission gave these options the hard look NEPA requires. *See* Certificate Order PP 299-301, 302, 304; EIS 3-14 to 3-16, 3-29 to 3-32.

Finally on this issue, Movants-Petitioners contend that the Environmental Statement improperly evaluated Project alternatives in light of the applicant's goals in proposing the Project. App. Voices Mot. 15-16. But, "[i]n formulating the [Environmental Statement] requirement, 'Congress did not expect agencies to determine for the applicant what the goals of the applicant's proposal should be.'" *City of Grapevine, Tex. v. Dep't of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994)

(quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir. 1991)); *see also Nat'l Comm. For the New River v. FERC*, 373 F.3d 1323, 1332-33 (D.C. Cir. 2004) ("as the Commission explained, it was the prerogative of [the project proponent] to determine the project's goals and the means of achieving them"). Instead, "where a federal agency is not the sponsor of a project, 'the Federal government's consideration of alternatives may accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.'" *Id.* (quoting *Citizens Against Burlington*, 938 F.2d at 197-98).

C. The Commission Reasonably Assessed Effects On Climate Change

Movants-Petitioners also cannot show a likelihood of success on their claim that the Commission failed to adequately analyze climate impacts of the downstream use of gas to be transported on the Project. App. Voices Mot. 16-18. The Commission took the requisite "hard look" at the Project's potential impacts on climate change.

The Commission developed estimates of the direct greenhouse gas emissions associated with construction and operation of the Project, as well as generic downstream emissions. *See* EIS 4-619 to 4-620; Certificate Order PP 292-95; *see also* Certificate Order n.286 (explaining that, unlike in *Sierra Club*, 867 F.3d at 1364, 1373 n.8, where the project's end users were known, the end users here are known for only approximately 13 percent of the Project's capacity -- the ultimate

destinations for the remaining gas will be determined by price differentials in the Northeast, Mid-Atlantic, and Southeast markets and, thus, are unknown). The Commission's estimate of the downstream greenhouse gas emissions was conservative, as it estimated greenhouse gas emissions caused by combustion of the Project's full design capacity. Certificate Order P 293 & n.288; EIS at 4-620. The estimate also represents the upper bound of end-use combustion that could result from the Project because some of the gas transported on it may displace other fuels (i.e., coal), which could lower total greenhouse gas emissions, or displace gas that otherwise would be transported via different means, which would result in no change in these emissions. Certificate Order P 293; EIS 4-620.

This satisfies the Court's recent decision in *Sierra Club*, 867 F.3d at 1374. There, this Court held that a FERC environmental impact statement should "either give[] a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the pipelines will transport or explain[] more specifically why it could not have done so." *Id.* Movants-Petitioners concede that "FERC estimated downstream [greenhouse gas] emissions . . . ." App. Voices Mot. 17.

The Commission also assessed the significance of the estimated downstream greenhouse gas emissions. *See* App. Voices Mot. 17. The Commission examined both regional and national greenhouse gas emissions and determined that

combustion of all the gas transported on the Project would, at most, increase greenhouse gas emissions regionally by two percent and nationally by one percent. Certificate Order P 294. The Commission determined that the emissions would increase the atmospheric concentration of greenhouse gases in combination with past and future emissions from all other sources, and that the emissions would contribute incrementally to climate change. EIS at 4-620; Certificate Order P 295. Again, this satisfies *Sierra Club*. *See* App. Voices Mot. 18 (pointing out that *Sierra Club*, 867 F.3d at 1374, stated that an Environmental Statement "need[s] to include a discussion of the 'significance'" of downstream emissions).

D. The Commission Reasonably Approved The Project Conditioned On Completion Of The National Historic Preservation Act Section 106 Process

In its separate stay motion, Blue Ridge contends that the Certificate Order violates section 106 of the National Historic Preservation Act ("Historic Preservation Act"), 54 U.S.C. § 306108, and NEPA by approving certification conditioned on completion of the section 106 process. Blue Ridge Mot. 3-12. Blue Ridge has not established a likelihood of success on the merits of this contention.

Historic Preservation Act section 106 provides that an "agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take

into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking." This Court has determined that there is no violation of the Historic Preservation Act where, as here, an agency approves a proposal conditioned upon completion of the section 106 process. *Grapevine*, 17 F.3d at 1509 (finding no violation of the Historic Preservation Act where the agency followed the procedure set out in Advisory Council on Historic Preservation regulations mostly after the agency issued its conditional approval decision but before construction would begin).

The Certificate Order explained that the section 106 process had not yet been completed and, therefore, that the Commission included Environmental Condition No. 15 in the order to "restrict[] construction until after all additional required surveys and evaluations are competed, survey and evaluation reports and treatment plans have been reviewed by the appropriate consulting parties, the Advisory Council on Historic Preservation has had an opportunity to comment, and the Commission has provided written notification to proceed." Certificate Order P 269; *see also id.* App. C Condition No. 15.

Blue Ridge argues that this condition is inadequate because it purportedly will allow Mountain Valley to begin "pre-construction" activities, "includ[ing] the felling of trees and the construction of access roads" before the section 106 process

is complete. Blue Ridge Mot. 9; *see also id.* at 11 (same). In support of this argument, Blue Ridge cites the "Declaration of Robert J. Cooper on Access to Survey" (attached to App. Voices' Motion at Exh. 1 to Exh. B). That declaration states, however, that Mountain Valley seeks access only "to survey the properties it was not able to survey by agreement to identify," among other things, "cultural resources that may require [Mountain Valley] to adjust its construction schedule and activities." Declaration P 15; *see also id.* PP 12, 23, 25, 28, 34 (same). Furthermore, "the felling of trees and the construction of access roads" are construction activities that Condition No. 15 prohibits until after the section 106 process is complete.

The Commission has just issued a very limited notice to proceed ("notice") with construction at specific yards and access roads at which all affected landowners have granted Mountain Valley permission for the requested construction activities. (Attachment A). The notice finds that, as to these specific yards and access roads, all necessary Environmental Conditions, including Environmental Condition No. 15, have been satisfied. *Id.* In addition, the notice states that it "does **not** authorize any construction activities anywhere else in the project area." *Id.*

Pointing to an email exchange (Blue Ridge Mot. Exh. B), Blue Ridge asserts that the Commission "arbitrarily refused to grant consulting party status to persons

and organizations such as [Blue Ridge] who intervened in the FERC proceeding . . . ." Blue Ridge Mot. 13-14; *see also id.* 13-15. Yet Blue Ridge never sought consulting party status. *See* EIS at Table 4.10.1-3 (listing the 23 entities or individuals that requested consulting party status). In the 2015 email exchange, seeking "Clarification" from a FERC staff member, Anita Puckett states that "[i]nformed local residents" told her that Preserve Montgomery County could not be both a consultant and an intervenor regarding the Project, and asks what steps she should take to withdraw the consultant application so an intervention motion could be submitted, which she would prefer if she could not do both.[4] Blue Ridge Mot. Exh. B at 1. Although the staff member's response (incorrectly) stated that Preserve Montgomery County could not be both an intervenor and a consulting party regarding the Project, *id.*, the record shows that FERC considered Preserve Montgomery County's consulting party request and did not reject it, or any other such request, based on the requesting party's intervenor status.

In a February 18, 2016 delegated letter order to Dr. Puckett addressing Preserve Montgomery County's request for consulting party status, the Commission explained that Advisory Council on Historic Preservation regulations for implementing section 106 encourage agencies to use existing procedures to

[4] Neither Dr. Puckett nor Preserve Montgomery County appears to be associated with Blue Ridge.

fulfill consultation requirements. Preserve Montgomery County Letter Order at 1, FERC Docket No. CP16-10, accession no. 20160218-3030 (Attachment B). In accordance with these regulations, 36 C.F.R. § 800.2(d), FERC seeks and considers the public's view on the Project's effects on historic properties. Letter Order at 1. The Commission found that its existing procedures provide Preserve Montgomery County with sufficient opportunity to comment on cultural resources information without having consulting party status. *Id.*; *cf.* Deplazes Letter Order, FERC accession no. 20170517-3029 (Attachment C) (showing that, where the Advisory Council on Historic Preservation disagreed with FERC's determination to deny consulting party status, the Commission reconsidered and reversed that determination). Furthermore, the Preserve Montgomery County Letter Order stated that Preserve Montgomery County would be able to obtain cultural resource documents and data, and explained how it should go about filing any comments. *Id.* at 1-2; *see also* EIS at 4-409 (showing that Preserve Montgomery County received cultural resource reports on March 28, May 25, July 22, and November 2, 2016, and February 2017).

As the record shows, numerous comments have been filed by Dr. Puckett and others in the underlying FERC proceeding regarding cultural resource matters, and the Commission has and will consider them during completion of the section

106 process. *See* EIS at 4-409 to 4-432 (detailing the consultations, communications and comments on cultural resources).

III. Movants-Petitioners Have Not Established An Irreparable Injury

A claim of irreparable injury absent a stay must be "both certain and great; it must be actual and not theoretical." *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *see also id.* (movant must "substantiate the claim that irreparable injury is 'likely' to occur;" "The movant must provide proof . . . indicating that the harm is certain to occur in the near future."). Unsupported assertions are insufficient. *Cuomo*, 772 F.2d at 978. The party seeking relief must show that "the injury complained of [is] of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Wis. Gas*, 758 F.2d at 674 (internal quotation omitted). A stay is not a matter of right; rather, any injury must be balanced against the other stay factors. *See Nken v. Holder*, 556 U.S. 418, 427 (2009) (a stay is an exercise of judicial discretion dependent upon the circumstances of the particular case).

Here, Movants-Petitioners allege harm to their members' recreational, aesthetic, and property interests caused by "the exercise of eminent domain, mature tree clearing, grading, trenching, blasting, soil compaction, soil erosion, and water degradation at stream and wetland crossings . . . ." App. Voices Mot. 19; *see also*

id. at 18-22 (same). These conclusory assertions do not suffice to demonstrate irreparable injury. *See Cuomo*, 772 F.2d at 978.

Movants-Petitioners' allegations also ignore the mitigation measures designed to eliminate or minimize environmental impacts. The Commission carefully addressed concerns about these matters, and many others, in its Environmental Statement and concluded that, as mitigated, construction and operation of the Project would have limited adverse environmental impacts, except for impacts on forested land. *See* EIS 4-1 to 4-622, 5-1; Certificate Order PP 132-310. Movants-Petitioners' contrary opinion -- that grading, trenching, blasting, soil compaction, soil erosion, and water degradation at stream and wetland crossings will cause them great harm -- does not constitute irreparable injury.

The Environmental Statement and Certificate Order did conclude that the Project would have a serious impact on forested land, and imposed mitigation measures to minimize those impacts as much as possible. Certificate Order PP 130, 191-203; Environmental Statement 4-164 to 4-191. After considering the information and analysis in the Environmental Statement as well as the other information in the record, the Commission concluded that the Project, including its impacts on forested land, is, with the required mitigation measures, an environmentally acceptable action. Again, Movants-Petitioners' contrary opinion does not establish irreparable injury necessary to obtain a stay.

Even if Movants-Petitioners could establish irreparable injury, a stay would be inappropriate here. As the Supreme Court has held, "[a] stay is an 'intrusion into the ordinary processes of administration and judicial review,' *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam), and accordingly 'is not a matter of right, even if irreparable injury might otherwise result to the appellant,' *Virginian R. Co. v. U.S.*, 272 U.S. 658, 672 (1926)[.]" *Nken*, 556 U.S. at 427. Any injury must be balanced against the other stay factors, *Va. Petroleum Jobbers*, 259 F.2d at 925, which, as shown here, weigh heavily against the granting of a stay. *See id.* ("Without . . . a substantial indication of probable success [on the merits], there would be no justification for the court's intrusion into the ordinary processes of administration and judicial review;" the court "must determine whether, despite the showings of probable success and irreparable injury on the part of petitioner, the issuance of a stay would have a serious adverse effect on other interested persons;" "In litigation involving the administration of regulatory statutes designed to promote the public interest, [the public interest] factor necessarily becomes crucial. The interests of private litigants must give way to the realization of public purposes."); *Winter*, 555 U.S. at 9 (courts must balance competing claims of injury, must consider the effect of granting or withholding the requested relief, and must "pay particular regard for the public consequences").

Blue Ridge's irreparable injury claim is based on its mistaken belief that Mountain Valley will be able to cut trees and construct access roads before the section 106 process is complete. See Blue Ridge Mot. 16-18. As already noted, however, tree cutting and access road construction, along with other construction activities, are prohibited by Certificate Order Condition No. 15 until the section 106 process is complete.

IV. A Stay Will Substantially Injure Other Parties

The Court must consider whether "a stay would have a serious adverse effect on other interested persons." *Va. Petroleum Jobbers*, 259 F.2d at 925. This Court has recognized that entities have a protected property interest in permits issued by the government. *See 3883 Conn. LLC v. Dist. of Columbia*, 336 F.3d 1068, 1074 (D.C. Cir. 2003) ("the permit holder has a substantial interest in the continued effect of the permit and in proceeding with a project without delay").

Enjoining the Commission-issued certificate and halting the Project while the Commission considers rehearing requests would seriously jeopardize the availability of additional capacity needed to transport natural gas to markets in the Northeast, Mid-Atlantic, and Southeast to meet increasing natural gas demand in those markets and also to markets along Mountain Valley's pipeline system. *See, e.g.*, Certificate Order PP 1, 6, 41, 56; EIS at 1-8. Such an outcome would harm not only the certificate holder, but also the five project shippers (two of which are

utilities) that have executed long-term supply agreements with Mountain Valley for 100 percent of the Project's capacity, and the customers of the utility-shippers, who depend on the utilities for reliable electricity service. *See id.* P 10.

V. The Public Interest Does Not Favor A Stay

The public interest is a "crucial" factor in "litigation involving the administration of regulatory statutes designed to promote the public interest." *Va. Petroleum Jobbers*, 259 F.2d at 925. The Natural Gas Act charges FERC with regulating the interstate transportation and wholesale sale of natural gas in the public interest. *See, e.g.*, *Columbia Gas Transmission Corp. v. FERC*, 750 F.3d 105, 112 (D.C. Cir. 1984). Because the Commission is the "presumptive[] guardian of the public interest," its views "indicate[] the direction of the public interest" for purposes of deciding a stay request. *N. Atl. Westbound Freight Ass'n v. Fed. Mar. Comm'n*, 397 F.2d 683, 685 (D.C. Cir. 1968); *see Myersville*, 783 F.3d at 1307-08 (Congress has entrusted FERC to determine if a certificate is in the public interest).

Here, a stay of the Project would not serve the public interest. The Commission found a strong showing of need in issuing the certificate to provide natural gas to meet the region's growing demand for natural gas. *See*, *e.g.*, Certificate Order PP 1, 6, 41, 56; EIS at 1-8.

The Commission's Tolling Order, which affords the Commission additional time to consider the pending requests for rehearing, neither creates final action nor evidences bad faith by the agency; Movants-Petitioners' claims to the contrary are unfounded. *See* App. Voices Mot. 3-6; *see also supra* pp. 8-12.

CONCLUSION

For the foregoing reasons, Appalachian Voices and Blue Ridge have not established the extraordinary circumstances necessary to justify a stay of the Certificate Order and, therefore, their motions and petition for stay should be denied.

Respectfully submitted,

James P. Danly
General Counsel

Robert H. Solomon
Solicitor

/s/ Beth G. Pacella
Beth G. Pacella
Deputy Solicitor

For Respondent
Federal Energy Regulatory Commission
Washington, D.C.

January 22, 2018

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32(e), I certify that this motion complies with the type-volume limitation of the Court's January 12, 2018 order in this case because this motion contains 7,427 words.

I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in Times New Roman 14-point font using Microsoft Word 2013.

/s/ Beth G. Pacella

Beth G. Pacella
Deputy Solicitor

Federal Energy Regulatory Commission
Washington, D.C. 20426
Tel.: (202) 502-6048
Fax: (202) 273-0901
Email: beth.pacella@ferc.gov

January 22, 2018

ATTACHMENT A

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000
§ 375.308(x)

January 22, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction at Certain Yards and Access Roads

Dear Mr. Eggerding:

I grant your January 5, 2018 request for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction at 6 yards and 93 access roads in Wetzel, Harrison, Doddridge, Lewis, and Braxton Counties, West Virginia, for which you state that Mountain Valley has received landowner permission for all the requested construction activities. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements.[1] The Implementation Plan and your supplements included the information necessary to meet the conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction. Specifically, we have determined that, as to the above-referenced 6 yards and 93 access roads, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

This letter does **not** authorize any construction activities anywhere else within the project area.

[1] The Implementation Plan was subsequently supplemented on December 21, 2017, and January 3 and 5, 2018, and the notice to proceed request was supplemented on January 11, 2018.

I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,

James Martin, Chief
Gas Branch 3
Division of Gas – Environment
and Engineering

cc: Public File, Docket No. CP16-10-000

ATTACHMENT B

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

February 18, 2016
Dr. Anita Puckett
Preserve Montgomery County
P.O. Box 10623
Blacksburg, VA 24062

Re: Mountain Valley Pipeline Project – Consulting Party Status

Dear Dr. Puckett:

Thank you for your June 15, 2015 letter to the Federal Energy Regulatory Commission (FERC or Commission), requesting that Preserve Montgomery County become a consulting party under Section 106 of the National Historic Preservation Act (NHPA) for the Mountain Valley Pipeline Project (Project) in the above-referenced docket. The Advisory Council on Historic Preservation's (ACHP) regulations for implementing Section 106 encourages agencies to make use of existing procedures to fulfill consultation requirements. In accordance with the ACHP's regulations at Title 36 Code of Federal Regulations (CFR) Part 800.2(d), the FERC seeks and considers the views of the public on Project effects on historic properties. Therefore, we believe that our existing procedures provide Preserve Montgomery County with sufficient opportunities to comment on cultural resources information, without having consulting party status.

In keeping with Section 304 of the NHPA, and the FERC's regulations at 18 CFR 380.12(f)(4), sensitive cultural resources data should be kept confidential and not released to the public. We understand that on July 15, 2015, Preserve Montgomery County signed a confidentially agreement with Mountain Valley Pipeline LLC (Mountain Valley) regarding the receipt and treatment of cultural resources data. Mountain Valley has not yet filed with the FERC cultural resources survey reports covering Project facilities in Montgomery County, Virginia; although we expect their submission in the near future. Once available, you may obtain copies of reports for Montgomery County directly from Mountain Valley, though Matthew Eggerding at 412-553-5786.

Any comments filed with the Commission from Preserve Montgomery County containing location, character, or ownership information about cultural resources must be marked **"Contains Privileged Information – Do Not Release"** and should be filed

separately from the remaining information which should be marked **"Public."** If you choose to file any information as *Privileged and Confidential* please ensure that your filing meets the requirements of 18 CFR 388.112 (b)(2)(i-vi).

You may file comments either electronically or on paper; however, with either method reference the project docket number (CP16-10-000) with your submission. Electronic filings can be made through the internet by going to the FERC's web page at www.ferc.gov and using the "Documents & Filings" link. To file a paper copy, send a letter addressed to:

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

If you have any questions, contact Paul Friedman, the FERC's Environmental Project Manager, at telephone number 202-502-8059 or email paul.friedman@ferc.gov. Thank you for your continued interest and involvement in our review of the Project

Sincerely,

James Martin, Chief
Gas Branch 3

cc: Public Files, Docket Nos. CP16-10-000 and CP16-13-000

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

ATTACHMENT C

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

May 17, 2017
Jerry and Jerolyn Deplazes
Newport Development Company
291 Seven Oaks Rd.
Newport, VA 24128

Re: Mountain Valley Pipeline Project – Consulting Party Status

Dear Mr. and Mrs. Deplazes:

In a letter to the Federal Energy Regulatory Commission (FERC or Commission) dated March 10, 2016, you requested consulting party status under Section 106 of the National Historic Preservation Act for the Mountain Valley Project (MVP) in the above-referenced docket. On April 8, 2016, we denied your request, indicating that you do not have to be a consulting party to have your views considered on potential project effects on historic properties, since our existing procedures provide you with sufficient opportunities to comment on cultural resources information. However, based on further consultation with the Advisory Council on Historic Preservation (ACHP), we have reconsidered our original position.

The proposed MVP pipeline route would cross your land at about milepost 212.0 (parcels VA-GI-4249 and VA-GI-200.016), known as the Puckett Farm, recorded by the Virginia Department of Historic Resources as site #35-412-52, which is a contributing resource to the National Register of Historic Places (NRHP)-listed Greater Newport Rural Historic District, in Giles County, Virginia. Your house is about 131 feet away from MVP workspaces.

Our reconsideration of your request was in response to a direct request by the ACHP. A number of factors are relevant to our determination. Of primary significance is the fact that you are an affected landowner with a structure already listed on the NRHP. Further, construction of the MVP would occur in close proximity to the structure. Consequently, we now accept your request to be a consulting party, in accordance with the regulations for implementing Section 106 at Title 36 Code of Federal Regulations Part 800.2(c)(5).

We will consider the views of consulting parties in our assessment of project effects (as required in Part 800.5(a)), and we will consult with consulting parties regarding the resolution of adverse effects (per Part 800.6(a)).

If you have any questions, contact Paul Friedman, the FERC's Environmental Project Manager, at telephone number 202-502-8059 or email paul.friedman@ferc.gov. Thank you for your continued interest and involvement in our review of the Project

Sincerely,

James Martin, Chief
Gas Branch 3

cc: Public Files, Docket Nos. CP16-10-000 and CP16-13-000

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Charlene Dwin Vaughn, AICP
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Program
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Appalachian Voices, et al. v. FERC
D.C. Cir. Nos. 17-1271, 18-1002 and 18-1006 (consolidated)

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 22nd day of January 2018, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system.

/s/ Beth G. Pacella
Beth G. Pacella
Deputy Solicitor

Federal Energy Regulatory
Commission
Washington, D.C. 20426
Tel.: (202) 502-6048
Fax: (202) 273-0901
Email: beth.pacella@ferc.gov

January 22, 2018