

**ORAL ARGUMENT HAS NOT BEEN SCHEDULED**

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**In the United States Court of Appeals  
for the District of Columbia Circuit****Nos. 17-1271, 18-1002, 18-1175, 18-1177 & 18-1186 (consolidated)**

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APPALACHIAN VOICES, *ET AL.*,  
*Petitioners,*

v.

FEDERAL ENERGY REGULATORY COMMISSION,  
*Respondent.*

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ON PETITIONS FOR REVIEW OF ORDERS OF THE  
FEDERAL ENERGY REGULATORY COMMISSION

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**RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION'S  
OPPOSITION TO MOTION FOR STAY**

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**GLOSSARY**

Certificate Order	<i>Mountain Valley Pipeline, LLC</i> , 161 FERC ¶ 61,043 (Oct. 13, 2017)
Commission	Federal Energy Regulatory Commission
EIS	Environmental Impact Statement
FERC	Federal Energy Regulatory Commission
Mountain Valley	Mountain Valley Pipeline, LLC
NEPA	National Environmental Policy Act of 1969, 42 U.S.C. § 4321 <i>et seq.</i>
Project	Mountain Valley Pipeline Project
Rehearing Order	<i>Mountain Valley Pipeline, LLC</i> , 163 FERC ¶ 61,197 (2018)

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**INTRODUCTION**

Appalachian Voices returns to this Court for the second time seeking, again, the extraordinary remedy of indefinitely delaying the Mountain Valley Pipeline Project (Project). In February 2018, the Court denied Appalachian Voices' initial request for a stay, finding that it had failed to satisfy the stringent standards for such extraordinary relief. *See Appalachian Voices, et al. v. FERC*, No. 17-1271 (D.C. Cir. Feb. 2, 2018) (denying motions for stay and a petition for writ of mandamus). In the ensuing six months, the only pertinent change is that this appeal has moved closer to a final ruling on the merits. The Commission has

issued an order on rehearing (*Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197 (June 15, 2018) (Rehearing Order) (attached as Exhibit B to Appalachian Voices’ Motion)), and filed the administrative record with this Court. And the Court has established a schedule pursuant to which merits briefing will be completed by early December. *See* Order dated July 25, 2018. Appalachian Voices offers no justification for interrupting the ordinary process of judicial review that is well underway.

The Fourth Circuit, the home of the Project, similarly has declined to interrupt the Commission’s review of the Project or disrupt the normal course of judicial review, as contemplated under the Natural Gas Act. Just this week, that court of appeals affirmed the district court’s dismissal of a constitutional challenge (based on landowner concerns with eminent domain rights that attach to the FERC-issued certificate) that would have halted forward progress of the Project. *Orus Berkeley, et al. v. Mountain Valley Pipeline and FERC*, No. 18-1042 (4th Cir. July 25, 2018); *see* slip op. 10-11 (“meaningful judicial review” available in the court of appeals after the Commission issues a rehearing order; “Congress contemplated construction would be allowed to continue while FERC reviews a petition for rehearing”). *See also* Order, No. 18-1042 (4th Cir. Feb. 15, 2018) (denying an emergency motion under the All Writs Act to prevent the exercise of eminent domain authority pending judicial review). And last month, in *Bold Alliance v.*

*FERC*, No. 18-1533 (4th Cir. June 7, 2018), the Fourth Circuit denied a motion for stay pending judicial review of a petition challenging the authority of FERC officials to issue notices to proceed with pipeline construction.<sup>1</sup>

These decisions involving the Mountain Valley Pipeline Project are consistent with a uniform line of federal appellate and district court decisions rejecting similar efforts to halt the effectiveness of FERC natural gas infrastructure decisions prior to judicial review on the merits. Over the last seven years, on review of FERC natural gas certificate decisions, the courts of appeals have rejected all such efforts, including those cited above (in *Berkeley* and *Appalachian Voices*) and also (most recently):

- *Appalachian Voices, et al. v. FERC*, No. 18-1114 (4th Cir. Mar. 21, 2018) (denying motion for stay and petition for writ of mandamus concerning Commission's conditional approval of the Atlantic Coast Pipeline);
- *Coalition to Reroute Nexus, et al. v. FERC*, Nos. 17-4302 and 17-4308 (6th Cir. Mar. 15, 2018) (denying motions for stay and petition for writ of mandamus concerning Commission's approval of Nexus pipeline);
- *Allegheny Def. Project v. FERC*, Nos. 17-1098, *et al.* (D.C. Cir. Feb. 16, 2018 & Nov. 8, 2017) (twice denying stay of pipeline construction based on challenge to FERC's indirect impacts analysis of Atlantic Sunrise Pipeline); and

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<sup>1</sup> On merits review of decisions of other federal agencies (Bureau of Land Management and U.S. Forest Service) related to the Project, the Fourth Circuit today remanded portions of those decisions back to those agencies for further consideration. *Sierra Club, et al. v. U.S. Forest Service, et al.*, No. 17-2399, *et al.* (4th Cir. July 27, 2018).

- *N.Y. State Dep't of Env'tl. Conservation & Protect Orange Cnty. v. FERC*, Nos. 17-3770 & 17-3966 (2d Cir. Dec. 7 & 15, 2017) (denying stays of Millennium pipeline construction based on Clean Water Act waiver and bald eagle protection).<sup>2</sup>

In addition, several district courts recently have denied requests for injunctive or interlocutory relief as to FERC natural gas certificate orders. *See, e.g., 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 pending religious freedom challenge), *aff'd*, No. 17-3163 (3d Cir. July 25, 2018); *Urban v. FERC*, No. 17-1005, 2017 WL 6461823 (N.D. Ohio Dec. 19, 2017) (dismissing challenge to FERC pipeline order for lack of subject matter jurisdiction and denying preliminary injunction).

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<sup>2</sup> Other recent court of appeals orders denying stays of FERC natural gas infrastructure orders are: *Sierra Club v. FERC*, No. 16-1329 (D.C. Cir. Nov. 17, 2016); *City of Boston v. FERC*, No. 16-1081 (D.C. Cir. Oct. 28, 2016); *Catskill Mountainkeeper v. FERC*, No. 16-345 (2d Cir. Feb. 24, 2016); *In re Clean Air Council*, No. 15-2940 (3d Cir. Dec. 8, 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 Env'tl. Pres. & 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 Env'tl. Pres. & Safety*, No. 12-1390 (D.C. Cir. Oct. 11, 2012); *Coal. for Responsible Growth & Res. Conservation v. FERC*, No. 12-566 (2d Cir. Feb. 28, 2012); and *Summit Lake Paiute Indian Tribe & Defenders of Wildlife v. FERC*, Nos. 10-1389 & 10-1407 (D.C. Cir. Jan. 28 & Feb. 22, 2011).

There is no basis for reaching a different result here. The requested stay would upset the Commission's public interest balance and imperil the Project. As a result, it should be denied.

## BACKGROUND

This case arises from the Commission's issuance of a conditional certificate of "public convenience and necessity" for the Mountain Valley Pipeline Project, a 303.5-mile-long new pipeline system running from Wetzel County, West Virginia to Pittsylvania County, Virginia. *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 1 (2017) (Certificate Order) (attached as Exhibit A to Appalachian Voices' motion).<sup>3</sup> Before issuing the certificate, the Commission balanced the public benefits of the Project against potential adverse consequences. *See id.* PP 30-31. Among other things, the Commission evaluated the need for the Project and determined that the Mountain Valley Pipeline Project is "required by the public convenience and necessity," *id.* P 62, and would "develop gas infrastructure that will serve to ensure future domestic energy supplies and enhance the pipeline

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<sup>3</sup> The Certificate Order also 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. 161 FERC ¶ 61,043 at P 1-2. Appalachian Voices only challenges the conditional certificate granted to Mountain Valley Pipeline, LLC (Mountain Valley).

grid by connecting sources for natural gas to markets in the Northeast, Mid-Atlantic, and Southeast regions.” *Id.* P 41.

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 in both its Certificate and Rehearing Orders and its comprehensive Environmental Impact Statement (EIS) for the Project. The environmental review included the consideration of more than 400 oral comments made at 13 public comment sessions and more than 2,000 written comments. *See* Certificate Order, 161 FERC ¶ 61,197 at 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.

In its most recent request for stay, Appalachian Voices focuses on just two of the numerous issues addressed by the Commission in the underlying proceeding: the mitigation of erosion and sedimentation risks, and the Commission’s assessment of downstream greenhouse gas impacts. The Commission addressed these issues in the final Environmental Impact Statement and the Certificate and Rehearing Orders. *See infra* pp. 7-15.

## ARGUMENT

“A stay is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 433-34 (2009) (citation and internal quotations omitted). To obtain such extraordinary relief, a movant must establish: (1) a strong showing that it is likely to prevail on the merits of its appeal; (2) that, without such relief, it 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). Appalachian Voices has not justified its request for the extraordinary remedy of a stay.

### **I. Appalachian Voices Has Not Shown A Likelihood Of Success On The Merits.**

Appalachian Voices 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 movant must “clearly establish[.]” a violation to obtain injunctive relief. *Cuomo v. NRC*, 772 F.2d 972, 976 (D.C. Cir. 1985) (finding moving party failed to demonstrate a “substantial

case on the merits”). Any such claim must overcome the high degree of deference accorded to 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 NEPA responsibilities, and its decisions are supported by substantial record evidence, as is demonstrated by the 930-page Environmental Impact Statement and the comprehensive Certificate and Rehearing Orders. While Appalachian Voices’ motion takes issue with two elements of the Commission’s environmental analysis – mitigation of erosion and sedimentation impacts, and consideration of downstream greenhouse gas emissions – Appalachian Voices is not likely to succeed on the merits of either claim.

**A. The Commission Reasonably Analyzed Erosion And Sedimentation-Related Impacts.**

The Commission’s environmental review examined potential effects on waterbodies during construction and operation of the Project due to erosion, sedimentation, or spills or leaks of hazardous materials. *See, e.g.*, Final EIS at 4-143, 4-149; Certificate Order, 161 FERC ¶ 61,043 at P 185. The final Environmental Impact Statement concluded that surface water impacts would be avoided or minimized through adherence to the Commission’s *Upland Erosion*

*Control, Revegetation and Maintenance Plan (Plan)* and *Wetland and Waterbody Construction and Mitigation Procedures (Procedures)* and other measures. Final EIS at 4-149; *see also id.* at 2-32 to 2-33 (listing other construction mitigation plans to be employed during construction and operation). The Commission adopted these recommended measure in the Certificate Order. 161 FERC ¶ 61,043 at PP 184-87.

Appalachian Voices contends that the Commission's reliance upon the Plan and Procedures is not supported by the record. Motion at 6-8. As explained in the Rehearing Order, however, mitigation measures are sufficient when based on agency assessments or studies or when they are likely to be adequately policed, such as when they are included as mandatory conditions imposed on pipelines. Rehearing Order, 163 FERC ¶ 61,197 at P 188 (citing *Abenaki Nation of Mississquoi v. Hughes*, 805 F. Supp. 234, 239 n.9 (D. Vt. 1992), *aff'd*, 990 F.2d 729 (2d Cir. 1993); *Nat'l Audubon Soc. v. Hoffman*, 132 F.3d 7, 17 (2d Cir. 1997)).

Here, the Commission's Plan and Procedures were developed in consultation with multiple state agencies across the country and updated based on Commission staff's field experience gained from pipeline construction and compliance inspections conducted over the last 25 years. *See* Rehearing Order, 163 FERC ¶ 61,197 at P 187. Experience confirms that, when correctly implemented, the Commission's Plan and Procedures adequately control erosion and protect aquatic

resources. *Id.* P 190.<sup>4</sup> In authorizing the Project, the Commission mandated that Mountain Valley employ environmental inspectors to ensure compliance with these standards. *See id.* P 188.<sup>5</sup>

Appalachian Voices attempts to demonstrate that the Commission's mitigation measures are inadequate by pointing to post-licensing instances where Mountain Valley was cited by other agencies for noncompliance with permit requirements. *See* Motion at 9-12. But the fact that Mountain Valley has been cited by other agencies for noncompliance does not establish that the Commission unreasonably found that its Plans and Procedures – developed through extensive experience with pipeline construction across the country – would adequately mitigate erosion and sedimentation impacts. As the Commission explained, “instances of non-compliance do not support a conclusion that there are pervasive flaws in the required mitigation measures.” Rehearing Order, 163 FERC ¶ 61,197 at P 190.

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<sup>4</sup> Unlike the mitigation measures “to be determined” and lacking immediate meaning in *American Rivers v. FERC*, No. 16-1195 (D.C. Cir. July 6, 2018), slip op. 37 (cited in Motion at 15), here the mitigation measures must be implemented and followed prior to pipeline construction and operation. *See* Certificate Order, 161 FERC ¶ 61,043 at App. C, P 8.

<sup>5</sup> Under the mandatory third-party monitoring program, a contractor is selected by, managed by, and reports solely to Commission staff to provide environmental compliance monitoring services. Rehearing Order, 163 FERC ¶ 61,197 at P 190 n.521.

Moreover, monitoring and enforcement are critical components of the Commission's mitigation measures. A third-party compliance monitor provides daily reports to the Commission staff on compliance issues, and Commission staff conducts periodic compliance inspections during all phases of construction and throughout restoration as necessary. *See* Rehearing Order, 163 FERC ¶ 61,197 at P 190 n.521. In addition, Mountain Valley is required to advise the Commission of any instances of noncompliance with any environmental conditions imposed by other state or federal agencies. *See* Certificate Order, 161 FERC ¶ 61,043 at App. C, P 8. This process ensures that the Commission has all necessary information to address non-compliance issues, make any necessary construction procedure adjustments, and ensure that any impacts are appropriately remediated where required. *See* Rehearing Order, 163 FERC ¶ 61,197 at P 190. There is no need for the Court to short circuit that process with a stay of construction.

**B. The Commission Reasonably Analyzed Downstream Emissions.**

Reprising an argument raised in support of its first motion for stay, Appalachian Voices contends that the Commission failed to adequately analyze the climate impacts of gas to be transported on the Project. *See* Appalachian Voices Jan. 8, 2018 Motion for Stay at 16-18. That argument was insufficient to support a stay six months ago, and it remains so today.

In the underlying proceeding, the Commission developed estimates of the

direct greenhouse gas emissions associated with construction and operation of the Project, as well as the greenhouse gas emissions associated with the combustion of the full design capacity of the Project. *See* EIS 4-619 to 4-620; Certificate Order, 161 FERC ¶ 61,043 at PP 292-95. The downstream emissions estimate 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. *See* Certificate Order, 161 FERC ¶ 61,043 at P 293; EIS 4-620.

Appalachian Voices claims that the Commission made no attempt to assess the impact of these emissions. Motion at 14, 18. But that is incorrect. The final EIS qualitatively described how greenhouse gases occur in the atmosphere and how they induce global climate change. *See* EIS at 4-488. In an effort to put these emissions into context, 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. *See* EIS at 4-617, 4-618; Certificate Order, 161 FERC ¶ 61,043 at P 294. The Commission also described the potential cumulative impacts of climate change in the markets expected to be served by the Project. *See* Rehearing Order, 163 FERC ¶ 61,197 at P 273;

Certificate Order, 161 FERC ¶ 61,043 at PP 292-95.

Relying upon *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017), Appalachian Voices claims that the Commission should have more closely examined downstream emissions. *See* Motion at 14-17. But as the Commission explained, the end users of the gas delivered by the project at issue in *Sierra Club* were known, which is dissimilar to the situation here. Certificate Order, 161 FERC ¶ 61,043 at P 292 n.286. Here, “the ultimate destination” of the vast majority of the gas “will be determined by price differentials in the Northeast, Mid-Atlantic, and Southeast markets and, thus, is unknown.” *Id.*

Appalachian Voices also contends that downstream emissions should be more closely analyzed as indirect or cumulative impacts of the Project under NEPA. Motion at 15-17. But the requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both types of impacts. Rehearing Order, 163 FERC ¶ 61,197 at P 302. And here the record failed to support a finding that the ultimate end-use combustion of the gas transported by the Project is reasonably foreseeable. The Commission “lacks meaningful information about the downstream use of the gas; i.e., information about future power plants, storage facilities, or distribution networks” that will make use of gas transported by the Project. *Id.* P 303. Moreover, even it could be assumed that gas transported by the project will be burned, the Commission has “no information as

to the extent such consumption will represent incremental consumption above existing levels, as opposed to substitution for existing sources of supply.” *Id.*

P 304 n.814. In short, the Commission complied with NEPA by reasonably evaluating the cumulative effects of the downstream emissions and describing how these greenhouse gas emissions would combine with other past and future emissions and contribute incrementally to climate change.<sup>6</sup>

Appalachian Voices also takes issue with the Commission’s decision not to employ the Social Cost of Carbon tool to analyze the environmental impacts of greenhouse gas emissions. Motion at 18-19. In the underlying orders, the Commission set forth an extensive discussion of why it believes that methodology is not appropriate for use in project-level NEPA reviews. *See* Certificate Order, 161 FERC ¶ 61,043 at P 296; Rehearing Order, 163 FERC ¶ 61,197 at PP 275-297. Appalachian Voices states that “FERC’s refusal” to use the Social Cost of Carbon

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<sup>6</sup> *See Cent. N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121, at PP 99-101 (2011) (holding that the extent and location of shale gas production development were not reasonably foreseeable with respect to a proposed 39-mile long pipeline located in Pennsylvania, in the heart of Marcellus Shale development), *on reh’g*, 138 FERC ¶ 61,104 (2012), *aff’d*, *Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 F. App’x 472, 474 (2d Cir. 2012) (Commission’s cumulative impact analysis sufficient where it included a short summary discussion of shale gas production activities). *See also Sierra Club v. DOE*, 867 F.3d 189, 202 (D.C. Cir. 2017) (holding that DOE’s generalized discussion of the impacts associated with non-conventional natural gas production fulfills its obligations under NEPA; DOE need not make specific projections about environmental impacts stemming from specific levels of export-induced gas production).

is “not due to any alleged deficiency in the tool.” Motion at 18. But that is incorrect. The Commission has observed, among other things, that there is no consensus on the appropriate discount rate to use for multi-generational analyses, and thus significant variations in output can result. *See* Rehearing Order, 163 FERC ¶ 61,197 at P 291; Certificate Order, 161 FERC ¶ 61,043 at P 296. *See also* Rehearing Order, 163 FERC ¶ 61,197 at PP 290, 293-94 (noting the absence of any standard by which to determine whether a particular dollar figure calculated from the Social Cost of Carbon tool is significant).

Appalachian Voices also asserts that the Commission’s determination not to use the Social Cost of Carbon tool represents a “collateral attack” on the court’s 2017 decision in *Sierra Club*. Motion at 19. But as explained in the Rehearing Order, the *Sierra Club* court “cited a case, *Earth Reports [v. FERC]*, 828 F.3d 949 (D.C. Cir. 2016)], that had accepted the Commission’s rejection of the Social Cost of Carbon based in part on the difficulty of determining significance.” Rehearing Order, 163 FERC ¶ 61,197 at P 296. Moreover, “the court *explicitly noted that it was not deciding* any issue with regards to the Social Cost of Carbon.” *Id.* (emphasis in original).

## **II. Appalachian Voices Has 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). 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).

Here, Appalachian Voices alleges harm to its members’ recreational, aesthetic, and property interests caused by impacts to forest resources that would purportedly be harmed by construction and sedimentation impacts to waterbodies. Motion at 20-22. The Commission’s environmental analysis concluded that the Project, as originally proposed, would have a serious impact on forested land, and imposed mitigation measures to minimize those impacts as much as possible. *See e.g.*, Certificate Order, 161 FERC ¶ 61,043 at PP 130, 191-203; Final EIS at 4-164 to 4-191. The Commission similarly analyzed impacts to waterbodies and found that they would be adequately minimized with the implementation of best management practices and the Commission-imposed environmental conditions. *See* Certificate Order, 161 FERC ¶ 61,043 at PP 165-190. The fact that Appalachian Voices disagrees with these conclusions does not establish irreparable injury.

Even if Appalachian Voices could establish irreparable injury, a stay would be inappropriate here. “A stay is an intrusion into the ordinary processes of administration and judicial review . . . and accordingly is not a matter of right, even

if irreparable injury might otherwise result to the appellant ....” *Nken*, 556 U.S. at 427 (internal quotations and citations omitted). Any injury must be balanced against the other stay factors which, as shown here, weigh heavily against the granting of a stay. *See Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (“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;” “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”).

### **III. 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 this case proceeds to a court ruling on the merits 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, 161 FERC ¶ 61,043 at PP 1, 6, 41, 56. 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.

#### **IV. 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 also Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307-08 (D.C. Cir. 2015) (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 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, 161 FERC ¶ 61,043 at PP 1, 6, 41, 56; EIS at 1-8.

### CONCLUSION

For the foregoing reasons, Appalachian Voices has not established the extraordinary circumstances necessary to justify a stay of pipeline construction and, therefore, the motion for stay should be denied.

Respectfully submitted,

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July 27, 2018

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), I certify that this reply complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(C) because it contains 4,464 words, excluding the parts exempted by Fed. R. App. P. 32(f).

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 2010.

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July 27, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that, on July 27, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Robert M. Kennedy

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