

171 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Mountain Valley Pipeline, LLC

Docket No. CP19-477-000

ORDER DENYING PROTEST AND AUTHORIZING CONSTRUCTION

(Issued April 16, 2020)

1. On June 3, 2019, Mountain Valley Pipeline, LLC (Mountain Valley) filed a prior notice request, pursuant to section 7 of the Natural Gas Act (NGA),¹ and sections 157.205 and 157.208 of the Commission's Part 157 blanket certificate regulations² seeking authorization to construct and operate a new metering and regulating station and related facilities in Monroe County, West Virginia (Greene Interconnect Project). The project is designed to allow Mountain Valley to deliver approximately 1.0 billion cubic feet per day (Bcf/d) of natural gas from its system to Columbia Gas Transmission, LLC's KA System.

2. Nancy Bouldin filed a timely protest to Mountain Valley's request. The protest was not withdrawn during the reconciliation period provided for in section 157.205(f) of the Commission regulations.³ Accordingly, Mountain Valley's filing has been reviewed as a case-specific certificate application under section 7 of the NGA. For the reasons discussed below, the Commission denies the protest and authorizes Mountain Valley to construct and operate the proposed facilities under its Part 157 blanket certificate.

I. Background and Proposal

3. Mountain Valley is a Delaware limited liability company, headquartered in Canonsburg, Pennsylvania. In 2017, the Commission authorized Mountain Valley in Docket No. CP16-10-000 to construct and operate the 303-mile-long, 42-inch-diameter

¹ 15 U.S.C. § 717f (2018).

² 18 C.F.R. §§ 157.205 and 157.208 (2019).

³ 18 C.F.R. § 157.205(f).

Mountain Valley mainline pipeline system through West Virginia and Virginia.⁴ As part of the certificate authorization, the Commission also granted Mountain Valley's request for a Part 157, Subpart F blanket construction certificate authorizing the performance of certain routine activities in conjunction with its operation of the pipeline.⁵

4. Mountain Valley states that the Greene Interconnect Project would allow it to deliver up to 1.0 Bcf/d of natural gas from the Mountain Valley mainline to the Columbia KA System, making additional natural gas supplies available to markets and customers on the Columbia KA System.⁶ The project would consist of a new metering and regulating (M&R) station connected to the Mountain Valley mainline; 30 feet of new 24-inch-diameter inlet pipeline (H-606) connecting the M&R station with the mainline; 340 feet of new 30-inch-diameter outlet pipeline (H-607), located parallel to the mainline right-of-way; and a new tap to connect to the Columbia KA System. Mountain Valley estimates the cost of the project at \$28,000,000.

II. Public Notice, Interventions, and Protests

5. Notice of Mountain Valley's prior notice application was issued on June 14, 2019, and published in the *Federal Register* on June 21, 2019,⁷ setting August 13, 2019, as the deadline to file motions to intervene and protests. Consolidated Edison Company of New York, NJR Energy Services Company, New Jersey Natural Gas Company, Indian Creek Watershed Association (ICWA), Preserve Monroe, Ann Petrie Brown, Maury Johnson, Sierra Club, Piedmont Natural Gas Company, O. Ashby Berkley, Taylor Johnson, Protect Our Water Heritage Rights, Patricia Cole, Wilbur and Irene Larew, Ashley Martini, Preserve Bent Mountain, Preserve Craig, Nancy Bouldin, Protect Our Commonwealth, and Arietta DuPre, filed timely motions to intervene.⁸ Dorothy Larew, Paula Mann, and Roseanna Sacco filed late motions to intervene that were granted.⁹

⁴ *Mountain Valley Pipeline*, LLC, 161 FERC ¶ 61,043 (2017) (Certificate Order), *order on reh'g*, 163 FERC ¶ 61,197 (2018) (Rehearing Order).

⁵ Certificate Order, 161 FERC ¶ 61,043 at PP 71–74.

⁶ Columbia's KA System runs from Kentucky to Maryland.

⁷ 84 Fed. Reg. 29,196 (June 21, 2019).

⁸ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2019).

⁹ Secretary's September 12, 2019 Notice Granting Late Intervention.

6. Pursuant to section 157.205(h) of the Commission's regulations, authorization to conduct an activity proposed under a blanket certificate is automatic so long as no protests to the activity are filed within 60 days of the date the notice is issued by the Commission.¹⁰ If a protest is filed within the 60-day period and it is not withdrawn or dismissed within 30 days after the 60-day notice period,¹¹ the activity shall not be deemed authorized by the blanket certificate; instead, the prior notice request is treated as an application for case-specific authorization under section 7 of the NGA.¹²

7. As noted above, on August 13, 2019, Ms. Bouldin filed a timely protest, which raised concerns about impacts on soils with erosion potential, erosion controls, and landslide risks on steep slopes.¹³ On August 23, 2019, Mountain Valley filed a request for waiver of the 30-day reconciliation period, stating that it was apparent that it would be unable to resolve the protest by the end of the reconciliation period, i.e., September 12, 2019. The protest was not withdrawn during the 30-day reconciliation period. Therefore, Mountain Valley's prior notice request is reviewed as an application for case-specific authorization under section 7 of the NGA. As the reconciliation period ended without resolution of the protests and before issuance of this order, we find that Mountain Valley's request for waiver is moot.

8. In addition to the protest, several individuals filed comments in opposition to the project alleging environmental damage, impacts on endangered species, and procedural questions.¹⁴ The Commission will address the issues raised below.

¹⁰ 18 C.F.R. § 157.205(h).

¹¹ The 30-day period, referred to as the "reconciliation period," provides the person who filed the protest, the applicant, any intervenors, and staff 30 days to resolve the protest. *Id.* § 157.205(f).

¹² *Id.*

¹³ On August 23, 2019, ICWA, Nancy Bouldin, and Preserve Craig (collectively ICWA et. al) jointly filed a late protest.

¹⁴ Many filings also include opposition to the Mountain Valley mainline project under Docket No. CP16-10. The Greene Interconnect Project is distinct from the approval of the mainline project. Under Docket No. CP16-10, the Commission previously found that the construction and operation of the Mountain Valley mainline is required by the public convenience and necessity. Comments in opposition to the mainline amount to an impermissible collateral attack on the Commission's prior order; therefore, they are not addressed in this order.

III. Preliminary Matters

9. Several parties assert that they were not given adequate notice of the project and that the effect is the exclusion of public participation.¹⁵ Specifically, the parties claim that because the prior notice request was not published in a local newspaper and is being processed under a new docket number and not included in the docket authorizing the construction of the mainline (i.e., CP16-10-000), the public did not have sufficient notice of the project. Commenters request that the Commission reopen the intervention period and process Mountain Valley's request as a separate certificate application in order to ensure adequate public participation.

10. Notice procedures for prior notice requests, such as this one, are governed by sections 157.203(d) and 157.205 of Commission regulations, which require that: (1) the applicant notify affected landowners¹⁶ in writing of the proposed project¹⁷ and (2) the Commission issue a notice of the request and publish the notice in the Federal Register.¹⁸ The regulations do not require notice of the project to be published in a local newspaper. Nor do the regulations require that the notice appear in the docket under which the blanket certificate was issued. Here, the applicant properly notified the affected landowner¹⁹ and the Commission properly issued a notice, which was published in the Federal Register.²⁰

11. ICWA requests that the Commission consolidate Docket Nos. CP16-10 and CP19-477 because "critical information that has previously been posted on CP16-10 is absent from Docket CP19-477 and consequently will not be considered in decisions

¹⁵ See Maury Johnson's August 13, 2019 Motion to Intervene and August 27, 2019 Comments, Paula Mann's August 14, 2019 Late Motion to Intervene, and ICWA's August 15, 2019 Filing at 1, and ICWA et al.'s August 23, 2019 Filing at 6. Despite their claims, each entity intervened and are parties to the proceeding. We note that Paula Mann raised this issue as a basis for seeking late intervention, which the Commission granted. See *supra* P 7.

¹⁶ "Affected landowner" is a defined term in section 157.6(d)(2) of the Commission's regulations. 18 C.F.R. § 157.6(d)(2) (2019). None of the protesters in this proceeding qualify as "affected landowners."

¹⁷ 18 C.F.R. § 157.203(d) (2019).

¹⁸ *Id.* § 157.205.

¹⁹ Application at 7 part XII.

²⁰ See *supra* note 8.

affecting the Greene Interconnect.”²¹ In general, the Commission consolidates proceedings only if a hearing is required to resolve common issues of law and fact, and consolidation will ultimately result in greater administrative efficiency.²² As noted above, the Commission has already authorized the construction and operation of the Mountain Valley mainline. Moreover, it issued an order denying rehearing of the certificate order in that proceeding, aggrieved parties sought judicial review, and the Commission’s orders were upheld.²³ Thus, the orders in that proceeding are final. Consolidating this proceeding with any ongoing post-certificate compliance issues related to mainline project would serve no useful purpose.

IV. Discussion

A. Blanket Certificate Eligibility

12. As a holder of a blanket construction certificate, Mountain Valley is authorized to undertake various routine activities, subject to certain reporting, notice, and protest requirements.²⁴ ICWA et al. question whether Mountain Valley should be able to use its blanket certificate authority to construct the Greene Interconnect Project.²⁵ The blanket certificate rules set out a class of routine and well-understood activities that the Commission has determined to be in the public convenience and necessity under section 7(c) of the NGA. Through cost limitations and other conditions, the blanket regulations limit the activities authorized under a blanket certificate such that the scrutiny involved in considering applications for case-specific certificate authorization is not necessary to ensure compatibility with the public convenience and necessity. The blanket certificate program is intended to increase flexibility and reduce regulatory and administrative burdens.²⁶ The prior notice procedures apply to activities that are not minor enough to qualify for automatic

²¹ ICWA November 22, 2019 Filing at 4.

²² *Tennessee Gas Pipeline Company, L.L.C.*, 157 FERC ¶ 61,254, at P 14 (2016).

²³ *Appalachian Voices v. FERC*, No. 17-1271 (D.C. Cir. Feb. 19, 2019).

²⁴ Certificate Order, 161 FERC ¶ 61,043 at PP 72-74.

²⁵ ICWA et al. August 23, 2019 Filing.

²⁶ *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Notice of Proposed Rulemaking, 115 FERC ¶ 61,338 (2006).

authorization under the Commission's blanket certificate regulations but that are still expected to have relatively minimal impact on the environment, ratepayers, and pipeline operations.²⁷

13. The blanket certificate regulations require that prior notice always be given for certain types of blanket certificate projects,²⁸ while prior notice of other types of blanket certificate projects is only required in the event that the project exceeds section 157.208's automatic authorization cost limits.²⁹ The blanket certificate regulations require prior notice in recognition that the projects requiring such notice may raise issues of concern for a pipeline company's existing shippers regarding possible effects on their services or may present valid environmental concerns to individual landowners, or others, notwithstanding that the pipeline companies will be able to satisfy all of the blanket certificate regulations' standard conditions.³⁰ Any person may file a protest to object to any request filed under the prior notice provisions.³¹ If the protest is not withdrawn or dismissed, the activity will not be deemed authorized by the blanket certificate and the Commission will treat the request as an application for case-specific section 7 authorization.³²

14. Further, section 380.5(b)(2) establishes that Commission staff will prepare an environmental assessment (EA) for all projects contemplated under the prior notice provision of section 157.208.³³ Preparation of an environmental document ensures that a pipeline company has, in fact, satisfied all of section 157.206(b)'s standard environmental conditions and also confirms that the standard conditions are appropriate to address potential adverse environmental impacts from the project. In protested prior notice

²⁷ See *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, FERC Stats. & Regs. ¶ 30,368 (1982) (cross-referenced at 19 FERC ¶ 61,216); See also, *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 117 FERC ¶ 61,074 (2006); 18 C.F.R. Pt. 157 (2019).

²⁸ For example, all blanket certificate projects under section 157.210 to construct mainline facilities are subject to the prior notice requirement regardless of cost. 18 C.F.R. § 157.210 (2019).

²⁹ 18 C.F.R. § 157.208(d) (2019).

³⁰ *Equitrans LP*, 158 FERC ¶ 61,103, at P 11 (2017).

³¹ 18 C.F.R. §§ 157.10 and 385.211 (2019).

³² 18 C.F.R. § 157.205(f).

³³ Section 157.208 applies to proposed projects for the construction, acquisition, operation, replacement, and/or miscellaneous rearrangement of facilities.

proceedings, such as this one, the Commission addresses any specific environmental concerns or issues raised in order to assess whether additional environmental conditions are needed.³⁴

15. Specifically, commenters state that the Commission's blanket authority: (1) violates due process by not allowing for notice and comment and a hearing on the application;³⁵ (2) permits companies to engage in activities that the applicant has not described in the primary case-specific pipeline application;³⁶ and (3) minimizes economic and environmental review.³⁷

16. Similar issues were raised in the rehearing request of the Certificate Order issued to Mountain Valley for its mainline.³⁸ As the Commission noted in the Rehearing Order, these arguments amount to an impermissible collateral attack on the blanket certificate program.³⁹ The Commission explained on rehearing that the blanket certificate authorization was created because the Commission found that a limited set of activities did not require case-specific scrutiny as they would not result in a significant impacts on rates, services, safety, security, competing natural gas companies or their customers, or

³⁴ Compare *Equitrans, L.P.*, 147 FERC ¶ 61,032, at P 21 (2014), and *CenterPoint Energy Gas Transmission Co.*, 121 FERC ¶ 61,180, at P 18 (2007) (authorizing pipeline companies to proceed under their Part 157 blanket certificates with the construction of compression facilities proposed in prior notice filings after addressing protesters' arguments and finding the blanket certificate regulations' standard noise abatement requirements adequate to ensure that the protesters would not be significantly affected by noise from operation of the new compressor station), with *Carolina Gas Transmission Corp.*, 150 FERC ¶ 61,111, at P 21 & n.23 (2015) (issuing case-specific certificate to authorize construction of compression facilities proposed under blanket certificate regulations' prior notice procedures because the Commission found additional environmental noise abatement conditions were appropriate to address protesters' concerns).

³⁵ ICWA et al. August 23, 2019 Filing.

³⁶ *Id.* at 5-6.

³⁷ *Id.* at 5.

³⁸ Rehearing Order, 163 FERC ¶ 61,197 at PP 84-92.

³⁹ *Id.* PP 84-87.

on the environment.⁴⁰ Moreover, in the Rehearing Order, the Commission re-affirmed that the blanket certificate program is consistent with the NGA.⁴¹

17. Noting that Mountain Valley currently lacks several permits that it needs to complete construction on the mainline, several commenters argue that Mountain Valley should not receive approval for the Greene Interconnect Project if the mainline will not be completed.⁴² In particular, ICWA⁴³ asks that we “put on hold” consideration of the Greene Interconnect Project until the United States Court of Appeals for the Fourth Circuit’s stay of the biological opinion and incidental take statement for the mainline⁴⁴ and the Commission’s resulting order to cease construction along the mainline and work areas (stop-work order)⁴⁵ are lifted.

⁴⁰ *Id.* at P 85.

⁴¹ *Id.*

⁴² Protect Our Commonwealth August 13, 2019 Filing; Eric Anspaugh August 13, 2019 Filing; ICWA November 22, 2019 Filing.

⁴³ ICWA November 22, 2019 Filing.

⁴⁴ The U.S. Fish and Wildlife Service (FWS) issued a Biological Opinion and Incidental Take Statement (Biological Opinion) for the mainline on November 21, 2017. Since issuance of the Biological Opinion, the candy darter, which is known to inhabit streams in the project area, was listed as endangered by the FWS; new information on the possible effects of the mainline on certain species covered by the Biological Opinion (i.e., Roanoke logperch, Indiana bat, and Northern long-eared bat) has also been identified in the interim (e.g., new information regarding impacts from sedimentation and slips). On September 11, 2019, the FWS accepted the Commission’s August 28, 2019 request to reinitiate consultation pursuant to section 7 of the Endangered Species Act (ESA). However, on October 11, 2019, the Fourth Circuit issued an order granting a stay of the FWS’s 2017 Biological Opinion and granted the Department of the Interior’s motion to hold the litigation in abeyance until completion of the reinitiated consultation. *Wild Virginia v. Department of the Interior*, Order, 4th Cir. No. 19-1866 (Oct. 11, 2019) (order granting stay and holding case in abeyance).

⁴⁵ In response to the court’s stay of the 2017 Biological Opinion, the Director of the Office of Energy Projects notified Mountain Valley that it must cease all construction activity along the entirety of the mainline and in all work areas except for restoration and stabilization activities. Letter Ordering Cessation of Certain Activities, Docket No. CP16-10-000 (Oct. 15, 2019).

18. The Commission routinely issues a Part 157 blanket construction certificate in the same proceeding as the case-specific section 7(c) authorization to construct pipeline facilities, as it did when authorizing the Mountain Valley mainline.⁴⁶ Mountain Valley's blanket certificate became effective as soon as it accepted its certificate to construct and operate the mainline.⁴⁷ Commission regulations do not require completion of the certificated project before blanket authorization becomes effective.⁴⁸ Accordingly, we disagree that the Greene Interconnect Project must await completion of the Mountain Valley mainline. With that said we also find that allowing Mountain Valley to commence construction immediately would not be consistent with the stop-work order currently in effect on the mainline. The stop-work order directed Mountain Valley to immediately cease "construction activity along all portions of the Project and in all work areas."⁴⁹ In its application for the Greene Interconnect Project, Mountain Valley states that 55 percent of the total land required to construct and operate the project would be within the existing right-of-way of the mainline.⁵⁰ Therefore, we are staying this authorization for Mountain Valley to proceed with construction of the Greene Interconnect Project until Mountain Valley receives appropriate federal permits, and the Director of the Office of Energy Projects lifts the stop-work order and authorizes Mountain Valley to continue constructing along portions of the mainline.

⁴⁶ See e.g., *MoGas Pipeline LLC*, 124 FERC ¶ 61,287, at P 14 (2008).

⁴⁷ See *MoGas Pipeline LLC*, 124 FERC ¶ 61,287 at P 14, *Calhoun LNG, L.P.*, 120 FERC ¶ 61,259, at P 32 (2007), *Gulf LNG Energy, LLC*, 118 FERC ¶ 61,128, at P 30 (2007), and *Shell Gas Pipeline Co.*, 74 FERC ¶ 61,219, at 61,738 (1996); see also 18 C.F.R. § 157.20(a) (requiring applicants to accept certificates in writing within 30 days from the issue date of the order issuing certificate).

⁴⁸ *MoGas Pipeline LLC*, 124 FERC ¶ 61,287 at PP 14-16 (holding that there is no bar to a new interstate pipeline filing prior notice of construction under its Part 157 blanket certificate as soon as it accepts the underlying case-specific certificate); see also 18 C.F.R. § 157.203(a) and (c) (discussing the effect of a blanket certificate) ("A blanket certificate issued pursuant to this subpart authorizes the certificate holder . . . to engage in any of the activities specified in § 157.208 through § 157.218 . . . if the requirements of § 157.205 have been fulfilled.").

⁴⁹ *Mountain Valley Pipeline, LLC*, Docket No. CP16-10-000, at 2 (Oct. 15, 2019) (delegated order) (Letter Ordering Cessation of Certain Activities).

⁵⁰ Resource Report 1 section 1.3. The total land requirement for construction and operation of the Greene Interconnect Project is 11.16 acres, of which 6.16 acres is in the existing right-of-way. *Id.*

B. Environmental Issues

19. Commission staff issued an environmental assessment (EA) for Mountain Valley's prior notice proposal on August 13, 2019. The EA addressed soils, water resources, vegetation, wildlife, cultural resources, air quality and noise, and reliability and safety. The EA did not identify a need for any specific environmental conditions in addition to the standard environmental conditions in section 157.206(b).⁵¹ The Commission received comments alleging that the project will cause environmental damage. We address the specific concerns below.

Geological Resources and Soils

20. The protest and several commenters are concerned that the project is located on steep slopes and across land with poor soils, which are prone to landslides and slips.⁵² The comments also raise concerns related to pipeline integrity and safety in landslide hazard areas.⁵³ ICWA et al. argue that if there is an emergency, the proposed facility location would "only be accessible by an Access Road that itself appears vulnerable to slippage and/or landslides."⁵⁴ Staff's review of Mountain Valley's environmental information determined that the Greene Interconnect Project is located in an area with slopes that are not considered a notable risk for landslides.⁵⁵ No slip-prone soils were identified. However, the EA explained that the project would cross about six acres of soils susceptible to water erosion.⁵⁶ To reduce impacts on soils, Mountain Valley will follow the measures outlined in the Commission's *Upland Erosion Control, Revegetation and Maintenance Plan* (Plan), and *Wetlands and Waterbody Construction and Mitigation*

⁵¹ EA at 12.

⁵² ICWA et al. August 23, 2019 Filing at 1, 2, and 4; Nancy Bouldin August 13, 2019 Protest at 1; ICWA August 15, 2019 Filing at 3; and Nan Gray August 13, 2019 Filing at 1.

⁵³ ICWA et al. August 23, 2019 Filing at 1, 2, and 4; and Nancy Bouldin August 13, 2019 Protest at 1.

⁵⁴ ICWA et al. August 23, 2019 Filing at 4.

⁵⁵ The EA noted that project area slopes range between 5 to 17 percent, which are not considered a notable risk for landslides. EA at 4.

⁵⁶ EA at 5.

Procedures (Procedures).⁵⁷ Those measures include the use of erosion control devices to minimize excessive erosion due to rainfall events.⁵⁸ In addition, due to the low risk of landslides in the project area and compliance with the Commission's Plan and Procedures, we have not identified any specific safety concerns.

21. Several commenters note that there have been variance requests relating to slip remediation for the mainline, and allege violations related to erosion and sediment controls,⁵⁹ in order to suggest that similar issues will occur on the Greene Interconnect Project.⁶⁰ To the extent that issues on the mainline inform issues that might arise in the Greene Interconnect Project, we find that the risks will be adequately managed by implementation of FERC's Plan and Procedures,⁶¹ which are in place to avoid or minimize harm to the environment or human health and safety.⁶²

⁵⁷ The Commission's Plan and Procedures are available at <https://www.ferc.gov/industries/gas/enviro/plan.pdf> and <https://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

⁵⁸ Several commenters assert that Mountain Valley underestimated the average annual rainfall for the project area. However, the erosion control measures required by the Plan and Procedures do not differ with precipitation levels.

⁵⁹ In particular, commenters cite various violation letters sent to Mountain Valley from the West Virginia Department of Environmental Protection (West Virginia DEP). The West Virginia DEP Notice of Violation letters found, *inter alia*, that Mountain Valley failed to comply with the approved Storm Water Pollution Prevention Plan, failed to properly implement water and erosion controls, and caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of streams. *See* Consent Order Issued Under the Water Pollution Control Act West Virginia Code, Chapter 22, Article 11, West Virginia Department of Environmental Protection, Order No. 8951 (Apr. 19, 2019).

⁶⁰ ICWA et al. August 23, 2019 Filing at 2–3; Protect Our Commonwealth August 13, 2019 Filing at 2; Elizabeth Malbon August 16, 2019 Filing at 1.

⁶¹ The Commission is aware that there have been erosion control failures during heavy rains along the mainline. However, most of incidents have been self-reported by Mountain Valley and repairs made soon after.

⁶² We also note that the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration's (PHMSA) has the exclusive authority to promulgate and enforce safety regulations and standards for the "the design, installation, construction, initial inspection, initial testing, operation, and maintenance of facilities used in the transportation of natural gas." *See* Memorandum of Understanding Between the Department of

22. Several commenters also raise a concern, without support, about cut-and-fill construction, arguing that construction on fill “would create more unstable conditions prone to erosion, subsidence and/or slips.”⁶³ In its application, Mountain Valley stated that it would conduct “all construction activities in accordance with applicable federal and state regulations.”⁶⁴ As discussed above, post-construction restoration activities will be completed in compliance with the Commission’s Plan. Pursuant to the Plan, Mountain Valley is required to restore pre-construction contours and stabilize affected land.

23. ICWA also requested that the Commission stay proceedings on the Greene Interconnect Project pending resolution of a motion regarding stormwater discharge on the mainline.⁶⁵ As noted previously, while the Greene Interconnect Project will be connected to the Mountain Valley mainline, it is a separate and distinct project. The EA for the Greene Interconnect Project independently determined that implementation of FERC’s Plan and Procedures are sufficient to control erosion related to the project.⁶⁶ Therefore, we deny ICWA’s request to stay proceedings on the Greene Interconnect Project pending resolution of the motion related to stormwater issues on the mainline.

Endangered Species

24. Pointing to the proximity of the project to the Greenville Saltpeter Cave, a known hibernaculum of several bat species, including the endangered Indiana bat and the threatened northern long-eared bat, commenters express concern that the project, including light, noise, and air emissions, will negatively impact these federally listed

Transportation and the Federal Energy Regulatory Commission Regarding Natural Gas Transportation Facilities, <http://www.ferc.gov/legal/mou/mou-9.pdf> (DOT Memorandum). DOT Memorandum recognizes PHMSA’s authority to develop safety standards for natural gas facilities, but states that under the NGA “the Commission exercises the authority over the siting of interstate natural gas transmission facilities and may impose conditions to mitigate the impact of construction or operation on the environment.” *Id.* at 2.

⁶³ ICWA et al. August 23, 2019 Filing at 3.

⁶⁴ Mountain Valley Application, Environmental Report at 1-8.

⁶⁵ ICWA December 9, 2019 Filing at 4. ICWA and other organizations filed a motion requesting that the Commission undertake an analysis of changes to peak stormwater discharge due to construction of the Mountain Valley mainline project, and to issue a project stop-work order until such analysis is complete. December 9, 2019 Motion for Revised Peak Stormwater Discharge Analysis, filed in Docket No. CP16-10-000. That motion is currently pending before the Commission.

⁶⁶ EA at 9-10.

bat species.⁶⁷ As documented in the EA, the U.S. Fish and Wildlife Service (FWS) determined that two federally listed species, the Indiana bat and the northern long-eared bat, may occur within the project area and may be affected by project construction.⁶⁸ However, the FWS made a finding that the project was “not likely to adversely affect the Indiana bat” as long as Mountain Valley implements its proposed Indiana Bat Conservation Plan, and that any take of the northern long-eared bat is exempted under the 4(d) rule of the Endangered Species Act (ESA).⁶⁹ In making its determination, the FWS took into consideration all pertinent project impacts on the species. We concur.⁷⁰

25. Citing the recent United States District Court for the District of Columbia case, *Center for Biological Diversity v. Everson*,⁷¹ Maury Johnson argues that the Greene Interconnect Project should not be allowed to proceed with construction as it is located near a hibernaculum of the northern long-eared bat.⁷² *Everson* found, *inter alia*, that the FWS’ decision to list the northern long-eared bat as a threatened species rather than as an endangered species under the ESA was not supported by the best available scientific data and further that FWS failed to articulate a rational connection between its own analysis and its determination.⁷³ The *Everson* court remanded the “threatened” listing decision of the northern long-eared bat to FWS to make a new listing decision.⁷⁴ *Everson* does not disturb the current listing of the northern long-eared bat as a threatened species. Nor has the FWS retracted its 4(d) rule for the northern long-eared bat. Accordingly, the

⁶⁷ ICWA et al. August 23, 2019 Filing at 4-5; Maury Johnson August 22, 2019 Filing at 1; and ICWA November 22, 2019 Filing at 3.

⁶⁸ FWS August 6, 2019 Letter at 1.

⁶⁹ *Id.* at 3.

⁷⁰ We note that despite commenters claims, the fact that the U.S. Court of Appeals for the Fourth Circuit stayed the biological opinion for the mainline (*Wild Virginia v.*

Department of the Interior, Order, 4th Cir. No. 19-1866 (Oct. 11, 2019)) is not relevant to the instant request as the FWS has provided separate consultation for the Greene Interconnect Project.

⁷¹ No. 15-CV-477, (D.D.C. Jan. 28, 2020) (*Everson*).

⁷² Maury Johnson February 10, 2020 Filing.

⁷³ *Id.* at 7-10.

⁷⁴ *Id.* at 22.

Commission does not find it appropriate to second-guess the FWS' determination that any take of the northern long-eared bat associated with the construction and operation of the Greene Interconnect Project is exempted by the 4(d) rule.

26. Several commenters argue that the Greene Interconnect Project is located in a "sensitive environmental area" because it is located within a buffer zone for the endangered Indiana bat; hence, they contend the Greene Interconnect Project is not eligible for blanket authorization.⁷⁵ Commission regulations provide that "[a]ny transaction authorized under a blanket certificate shall not have significant adverse impact on a sensitive environmental area."⁷⁶ "Sensitive environmental area" is defined as "[t]he habitats of species which have been identified as endangered or threatened under the Endangered Species Act."⁷⁷ As discussed above, although federally listed species may occur within the proposed location of the Greene Interconnect Project, the FWS determined that, with the implementation of the proposed Indiana Bat Conservation Plan,⁷⁸ the project would not adversely affect the Indiana bat, *inter alia*, because "all the [potential roost trees] identified for this Project . . . are located outside of the Project's limits-of-disturbance and will not be cleared during construction. . . ."⁷⁹

27. In addition, one commenter claims, without providing evidence, that the rusty patched bumble bee, which is a federally listed ESA species, occurs within the project area.⁸⁰ In its August 1, 2019 letter to Mountain Valley, FWS did not identify the rusty patched bumble bee as a federally listed ESA species that may be affected by the project.⁸¹ As discussed above, only two federally listed ESA species (i.e., the Indiana bat

⁷⁵ ICWA et al. August 23, 2019 Filing at 5; ICWA November 22, 2019 Filing at 3.

⁷⁶ 18 C.F.R. § 157.206(b)(4) (2019).

⁷⁷ *Id.* § 157.202(b)(11).

⁷⁸ On May 31, 2019, Mountain Valley initiated an informal Endangered Species Act consultation with the Fish and Wildlife Service West Virginia Field Office. The FWS interpreted Mountain Valley's May 31, 2019 submittal as an Indiana Bat Conservation Plan. See FWS August 2019 letter at 2. As a mitigation measure, Mountain Valley committed to conducting clearing activities only during the winter (November 15 to March 31) to avoid potential impacts to the Indiana bat and northern long-eared bat. Mountain Valley December 5, 2019 Response to Data Request.

⁷⁹ FWS August 6, 2019 Letter at 2.

⁸⁰ Maury Johnson August 22, 2019 Filing.

⁸¹ FWS August 6, 2019 Letter.

and the northern long-eared bat) were determined to occur in the project area.⁸² FWS did not request any additional biological surveys for this project.⁸³ Consequently, and in the absence of other evidence, we do not find it necessary to require surveys for the rusty patched bumble bee for this project.

Air and Water Resources

28. Referring to an emission table provided by Mountain Valley, one commenter states, without explanation, that construction of the Greene Interconnect Project might involve “more GHG emissions than allowable.” Neither the Clean Air Act nor state regulations impose applicable greenhouse gas emission limits. Nonetheless, the EA estimated the GHG emissions resulting from the construction of the project.⁸⁴

29. Several commenters also raised concerns that the project would impact Indian Draft stream and the Indian Draft watershed.⁸⁵ As indicated in staff’s EA, the project would not cross any waterbodies, and impacts on any nearby intermittent-flowing streams would be minimized by Mountain Valley following the measures outlined in the FERC’s Plan and Procedures.

V. Conclusion

30. As explained above, when a prior notice filing is protested and the protest is not withdrawn within the reconciliation period, the activity is not deemed authorized by the blanket certification, and instead, the Commission treats the filing as an application for case-specific authorization. However, when the Commission subsequently finds that the protest should be denied, it is Commission policy to authorize the construction and operation of the delivery facilities under the applicant’s Part 157 blanket certificate, rather than grant redundant case-specific certificate authority.⁸⁶ For the reasons discussed above, the Commission has determined that the protest to the prior notice filing should be

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Although the EA makes general observations about the project’s operational air emissions, it does not make any specific findings on GHG emissions. EA at 9-10.

⁸⁵ Nancy Bouldin August 13, 2019 Protest at 1; ICWA August 15, 2019 Filing at 3; ICWA December 9, 2019 Filing at 3.

⁸⁶ *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,138, at P 39 (2014). *See also Kinder Morgan Gas Transmission, LLC*, 133 FERC ¶ 61,044, at P 41 (2010) (citing *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,258, at P 20 (2008); *Destin Pipeline Co.*,

denied and that Mountain Valley has complied with the requirements under its blanket certificate. Therefore, consistent with the Commission's policy against granting redundant case specific authority, the Commission will authorize Mountain Valley to proceed with construction of its Greene Interconnect Project under its Part 157 blanket certificate, subject to the blanket certificate regulations' conditions in section 157.206(b) of the Commission's regulations.

31. On a meeting held on April 16, 2020, the Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Mountain Valley Pipeline, LLC is authorized to construct and operate the facilities, as described herein and more fully described in Mountain Valley's prior notice request, pursuant to its Part 157 blanket certificate.

(B) The authorization granted in ordering paragraph (A) is stayed until Mountain Valley receives appropriate federal permits, and the Director of the Office of Energy Projects lifts the stop-work order and authorizes Mountain Valley to continue constructing along portions of the mainline.

(C) Mountain Valley's request for waiver of the reconciliation period is dismissed as moot.

(D) The protest is denied.

(E) The request for stay of the Greene Interconnect Project pending resolution of a motion in Docket CP16-10 is denied.

(F) The request to consolidate Docket Nos. CP16-10 and CP19-477 is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,

Deputy Secretary.