



# STATEMENT

## Statement of Commissioner Cheryl A. LaFleur on Order Issuing Certificates and Granting Abandonment Authority

Date: October 13, 2017

Docket Nos.: CP16-10-000  
CP15-554-000

“With the increasing abundance of domestic natural gas, the Commission plays a key role in considering applications for the construction of natural gas infrastructure to support the delivery of this important fuel source. Under the Certificate Policy Statement, which sets forth the Commission’s approach to evaluating proposed projects under Section 7 of the Natural Gas Act, the Commission evaluates in each case whether the benefits of the project as proposed by the applicant outweigh adverse effects on existing shippers, other pipelines and their captive customers, landowners, and surrounding communities.<sup>1</sup> For each pipeline I have considered during my time at the Commission, I have tried to carefully apply this standard, evaluating the facts in the record to determine whether, on balance, each individual project is in the public interest.<sup>2</sup> Today, the Commission is issuing orders that authorize the development of the Mountain Valley Pipeline Project/Equitrans Expansion Project (MVP) and the Atlantic Coast Pipeline Project (ACP). For the reasons set forth herein, I cannot conclude that either of these projects as proposed is in the public interest, and thus, I respectfully dissent.

“Deciding whether a project is in the public interest requires a careful balancing of the need for the project and its environmental impacts. In the case of the ACP and MVP projects, my balancing determination was heavily influenced by similarities in their respective routes, impact, and timing. ACP and MVP are proposed to be built in the same region with certain segments located in close geographic proximity. Collectively, they represent approximately 900 miles of new gas pipeline infrastructure through West Virginia, Virginia and North Carolina, and will deliver 3.44 Bcf/d of natural gas to the Southeast. The record demonstrates that these two large projects will have similar, and significant, environmental impacts on the region. Both the ACP and MVP cross hundreds of miles of karst terrain, thousands of waterbodies, and many agricultural, residential, and commercial areas. Furthermore, the projects traverse many important cultural, historic, and natural resources, including the Appalachian National Scenic Trail and the Blue Ridge Parkway. Both projects appear to be receiving gas from the same location, and both deliver gas that can reach some common destination markets. Moreover, these projects are being developed under similar development schedules, as

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<sup>1</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (*Certificate Policy Statement*), order on clarification, 90 FERC ¶ 61,128, order on clarification, 92 FERC ¶ 61,094 (2000); 15 U.S.C. 717h (Section 7(c) of the Natural Gas Act provides that no natural gas company shall transport natural gas or construct any facilities for such transportation without a certificate of public convenience and necessity.).

<sup>2</sup> See *Millenium Pipeline Company, L.L.C.*, 140 FERC ¶ 61,045 (2012) (*LaFleur, Comm’r, dissenting*).

further evidenced by the Commission acting on them concurrently today.<sup>3</sup> Given these similarities and overlapping issues, I believe it is appropriate to balance the collective environmental impacts of these projects on the Appalachian region against the economic need for the projects. In so doing, I am not persuaded that both of these projects as proposed are in the public interest.

"I am particularly troubled by the approval of these projects because I believe that the records demonstrate that there may be alternative approaches that could provide significant environmental advantages over their construction as proposed. As part of its alternatives analysis, Commission staff requested that ACP evaluate an MVP Merged Systems Alternative that would serve the capacity of both projects.<sup>4</sup> This alternative would largely follow the MVP route to deliver the capacity of both ACP and MVP in a single large diameter pipeline. Commission staff identifies significant environmental advantages of utilizing this alternative. For example, the MVP Merged Systems Alternative would be 173 miles shorter than the cumulative mileage of both projects individually. This alternative would also increase collocation with existing utility rights-of-way, avoid the Monongahela National Forest and the George Washington National Forest, reduce the number of crossings of the Appalachian National Scenic Trail and Blue Ridge Parkway, and reduce the amount of construction in karst topography. Commission staff eliminated this alternative from further consideration because it failed to meet the project's objectives, in particular that it would "result in a significant delay to the delivery of the 3.44 Bcf/d of natural gas to the proposed customers of both ACP and MVP"<sup>5</sup> due to the significant time for the planning and design that would be necessary to develop a revised project proposal.<sup>6</sup>

"Similarly, in the MVP FEIS, Commission staff evaluated a single pipeline alternative to the MVP project that would utilize the proposed ACP to serve MVP's capacity needs.<sup>7</sup> While this alternative was found to have certain environmental disadvantages, such as the need for additional compression to deliver the additional gas, the EIS acknowledges that this alternative would "essentially eliminate all environmental impacts on resources along the currently proposed MVP route."<sup>8</sup>

"I recognize that the two alternatives described above were eliminated from further consideration because they were deemed not to meet each project's specific stated goals. However, I believe that these alternatives demonstrate that the regional needs that these pipelines address may be met through alternative approaches that have significantly fewer environmental impacts.

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<sup>3</sup> ACP and MVP filed their applications for approval pursuant to section 7(c) of the Natural Gas Act on September 18, 2015 and October 23, 2015, respectively.

<sup>4</sup> ACP Final Environmental Impact Statement (FEIS) at 3-6 – 3-9.

<sup>5</sup> *Id.* at 3-9.

<sup>6</sup> Staff also found that this alternative would likely limit the ability to provide additional gas to the projects' customers, another of the stated goals for the original proposal. *Id.*

<sup>7</sup> MVP FEIS at 3-14.

<sup>8</sup> *Id.*



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“While my dissents rest on my concerns regarding the aggregate environmental impacts of the proposed projects, particularly given the potential availability of environmentally-superior alternatives, I believe that the needs determinations for these projects highlight another issue worthy of further discussion.

“The Commission’s policy regarding evaluation of need, and the standard applied in these cases, is that precedent agreements generally are the best evidence for determining market need. When applying this precedent here, I believe there is an important distinction between the needs determinations for ACP and MVP. Both projects provide evidence of precedent agreements to demonstrate that these pipelines will be fully subscribed. ACP also provides specific evidence regarding the end use of the gas to be delivered on its pipeline. ACP estimates that 79.2 percent of the gas will be transported to supply natural gas electric generation facilities, 9.1 percent will serve residential purposes, 8.9 percent will serve industrial purposes, and 2.8 percent will serve other purposes such as vehicle fuel.<sup>9</sup> In contrast, “[w]hile Mountain Valley has entered into precedent agreements with two end users ... for approximately 13% of the MVP project capacity, the ultimate destination for the remaining gas will be determined by price differentials in the Northeast, Mid-Atlantic, and Southeast markets, and thus, is unknown.”<sup>10</sup>

“In my view, it is appropriate for the Commission to consider as a policy matter whether evidence other than precedent agreements should play a larger role in our evaluation regarding the economic need for a proposed pipeline project. I believe that evidence of the specific end use of the delivered gas within the context of regional needs is relevant evidence that should be considered as part of our overall needs determination. Indeed, the Certificate Policy Statement established a policy for determining economic need that allowed the applicant to demonstrate need relying on a variety of factors, including “environmental advantages of gas over other fuels, lower fuel costs, access to new supply sources or the connection of new supply to the interstate grid, the elimination of pipeline facility constraints, better service from access to competitive transportation options, and the need for an adequate pipeline infrastructure.”<sup>11</sup> However, the Commission’s implementation of the Certificate Policy Statement has focused more narrowly on the existence of precedent agreements.

“I believe that careful consideration of a fuller record could help the Commission better balance environmental issues, including downstream impacts, with the project need and its benefits.<sup>12</sup> I fully realize that a broader consideration of

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<sup>9</sup> ACP FEIS at 1-3.

<sup>10</sup> Mountain Valley Pipeline, LLC, Equitrans, L.P., 161 FERC ¶ 61,043 at FN 286 (October 13, 2017).

<sup>11</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,744.

<sup>12</sup> I note that this approach would not necessarily lead to the rejection of more pipeline applications. Rather, it would provide all parties, including certificate applicants, the opportunity to more broadly debate and consider the need for a proposed project. This could, for example, support development of new infrastructure in constrained regions where there may be demand for new capacity, but barriers to the execution of precedent agreements that are so critical under the Commission’s current approach. In such situations, evidence of economic need other than precedent agreements might be offered as justification for the pipeline.



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need would be a change in our existing practice, and I would support a generic proceeding to get input from the regulated community, and those impacted by pipelines, on how the Commission evaluates need.<sup>13</sup>

“I recognize that the Commission’s actions today are the culmination of years of work in the pre-filing, application, and review processes, and I take seriously my decision to dissent. I acknowledge that if the applicants were to adopt an alternative solution, it would require considerable additional work and time. However, the decision before the Commission is simply whether to approve or reject these projects, which will be in place for decades. Given the environmental impacts and possible superior alternatives, approving these two pipeline projects on this record is not a decision I can support.

For these reasons, I respectfully dissent.”

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<sup>13</sup> See also, *National Fuel Gas Supply Corporation, Empire Pipeline, Inc.*, 158 FERC ¶ 61,145 (Bay, Comm’r, Separate Statement).