

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

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Mountain Valley Pipeline, LLC )	
_____ )	CP16-10-000
Mountain Valley Pipeline Project )	
_____ )	

**GILES COUNTY’S ANSWER IN OPPOSITION TO  
REQUEST FOR NOTICE TO PROCEED NO. 5**

Pursuant to 18 C.F.R. § 385.213(a)(3), Giles County, Virginia files this answer in opposition to the “Request for Notice to Proceed No. 5,” filed by Mountain Valley Pipeline, LLC (“Mountain Valley”) on January 26, 2018, and clarified on January 31, 2018.<sup>1</sup> Mountain Valley has requested that “the Director of the Office of Energy Projects [“OEP”] issue a Notice to Proceed with all construction activities for the facilities listed in Attachment A” by February 1, 2018.<sup>2</sup> The facilities listed in Attachment A are located in Giles County. The County respectfully requests that the Director of OEP deny this request, and any future requests to proceed in Giles County, as premature pending the Commission’s decision on the merits of the County’s rehearing request and Mountain Valley’s completion of pre-construction environmental conditions.

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<sup>1</sup> Mountain Valley, “Request for Notice to Proceed Nos. 4 and 5,” eLibrary no. 20180126-5216 (Jan. 26, 2018); Mountain Valley, “Clarifications to Request for Notice to Proceed Nos. 4 and 5,” eLibrary no. 20180131-5019 (Jan. 31, 2018).

<sup>2</sup> See eLibrary no. 20180126-5216, p. 14.

**I. The Director of OEP Should Not Authorize Construction Until the Commission Issues a Decision on the Merits of Rehearing.**

On November 13, 2017, Giles County joined Roanoke and Craig Counties in seeking rehearing<sup>3</sup> of the “Order Issuing Certificates and Granting Abandonment Authority” (“Certificate Order”).<sup>4</sup> On December 13, 2017, the Commission issued an “Order Accepting Rehearings for Further Consideration,”<sup>5</sup> but it has not yet issued a decision on the merits of rehearing or published an anticipated schedule for such decision.

On rehearing, the Counties argued that the Certificate Order violated the Natural Gas Act and National Environmental Policy Act, and requested that the Commission vacate the decision and remand the matter to its staff for further procedures in accordance with applicable law. The Counties concurrently requested a stay of the Certificate Order, arguing that Mountain Valley should not be allowed to begin *any* construction until the Commission issued a decision on the merits of their rehearing request.<sup>6</sup> In support, they cited the irreparable harm that project construction posed to forested lands and groundwater sources along the project route.

On January 10, 2018, Roanoke County filed an “Answer in Opposition to Request to Proceed No. 1.”<sup>7</sup> Giles County supports and incorporates by reference Roanoke County’s arguments objecting to the Director of OEP’s authorization of construction in advance of the

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<sup>3</sup> “Roanoke, Giles, and Craig Counties’ Request for Rehearing and Stay of Order Issuing Certificates and Granting Abandonment Authority,” eLibrary no. 20171113-5371 (Nov. 13, 2017) (“Counties Rehearing Request”).

<sup>4</sup> See eLibrary no. 20171013-4002 (Oct. 13, 2017)

<sup>5</sup> See eLibrary no. 20171213-3061.

<sup>6</sup> Counties’ Rehearing Request, p. 50.

<sup>7</sup> “Answer in Opposition to Request for Notice to Proceed No. 1 by Roanoke County,” eLibrary no. 20180110-5174 (Jan. 10, 2018).

Commission's decision on the merits of rehearing.<sup>8</sup> It also supports the request for an explanation of how the Commission will ensure that any authorizations to proceed with construction that are issued do not foreclose effective relief on the pending rehearing requests.<sup>9</sup>

**II. The Director of OEP Should Not Grant Request to Proceed No. 5 Until Mountain Valley Completes Pre-Construction Environmental Conditions.**

The Certificate Order requires Mountain Valley to complete more than twenty (20) environmental conditions before it may begin construction.<sup>10</sup> Mountain Valley's requests to proceed in areas where those pre-construction conditions have not been met is premature.

In particular, the record does not demonstrate that all pre-construction conditions relevant to construction within Giles County have been satisfied. For example, Environmental Condition No. 15 has not been satisfied. That condition requires:

Mountain Valley and Equitrans **shall not begin construction** of facilities and/or use staging, storage, or temporary work areas and new or to-be-improved access roads **until**:

- a. Mountain Valley and Equitrans each files with the Secretary:
- b. remaining cultural resources survey reports;
- c. site evaluation reports, avoidance plans, or treatment plans, as required; and comments on the reports and plans from the appropriate State Historic Preservation Offices, federal land managing agencies, interested Indian tribes, and other consulting parties.
- d. the Advisory Council on Historic Preservation has been afforded an opportunity to comment if historic properties would be adversely affected; and
- e. the FERC staff reviews and the Director of OEP approves all cultural resources reports and plans, and notifies Mountain Valley ... in writing that either treatment measures

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<sup>8</sup> See *id.* at 1-3.

<sup>9</sup> See letter from Roanoke County to Secretary Kimberly D. Bose, eLibrary no. 20180124-5060 (Jan. 24, 2018), p. 3.

<sup>10</sup> See Certificate Order, Appendix C, pp. 5-10.

(including archaeological data recovery) may be implemented or construction may proceed.<sup>11</sup>

According to Mountain Valley’s “Response to Post Order Environmental Information Request,” it has not yet obtained the Virginia State Historic Preservation Officer’s (“SHPO”) review or comments on several cultural resource reports.<sup>12</sup> Mountain Valley is also still consulting with the Virginia SHPO, Giles County, Greater Newport Rural Historic District Committee, and certain landowners regarding the resolution of adverse effects on historic properties located within the County and treatment plans to address any adverse effects that cannot be avoided. OEP Staff has not yet approved those treatment plans.<sup>13</sup>

On January 25, 2018, Mountain Valley filed an update regarding its discussions with Giles County staff regarding treatment plans for historic properties within the County.<sup>14</sup> Those discussions are still ongoing, as shown in the information filed. For example, measures to resolve the project’s visual impacts in around the historic districts are still under discussion.<sup>15</sup> The County remains concerned that those impacts have been not been fully considered due to deficiencies in Mountain Valley’s analysis of visual effects on the historic districts.<sup>16</sup>

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<sup>11</sup> *Id.* at Appendix C, p. 6 (bold in original).

<sup>12</sup> Mountain Valley, “Response to Post Order Environmental Information Request,” eLibrary no. 20180105-5141 (Jan. 5, 2018) (“Response to Post-Order EIR”), pp. 13-14.

<sup>13</sup> Pursuant to the Programmatic Agreement executed under National Historic Preservation Act section 106 to protect historic resources in Virginia, consulting parties submitted comments on Mountain Valley’s proposed Treatment Plans for the Big Stony Creek Historic District, the Greater Newport Rural Historic District, the Bent Mountain Rural Historic District, and the Coles-Terry Rural Historic District on January 4, 2018. Neither Mountain Valley nor OEP Staff have specifically responded to those comments.

<sup>14</sup> See letter from Matthew Eggerding to Secretary Kimberly D. Bose, eLibrary no. 20180125-5160 (Jan. 25, 2018), Attachments G – I.

<sup>15</sup> See *id.*, Attachment G, unnumbered p. 2.

<sup>16</sup> Giles County previously submitted David Yolton’s “*Report on Potential Viewshed Scars and Scenic Degradation Resulting from MVP Project Through the Greater Newport Historic District of Giles County, Virginia and Adjacent Areas*,” which describes the deficiencies in Mountain Valley’s analysis of visual effects on the Greater

In addition, Environmental Conditions 19 through 22, and 24 require Mountain Valley to file the following plans with the Secretary for review and written approval of the Director of OEP:

- Revised Landslide Mitigation Plan;
- Revised Karst Mitigation Plan;
- Revised Water Resources Identification and Testing Plan;
- Source, location, and quantities of water to be used for dust control; and
- Water Supply Contingency Plans.<sup>17</sup>

Based on the County's review, the Director of OEP has not provided documentation of review or written approval of these various plans, which address resources in Giles County, on the record.<sup>18</sup> In the absence of documentation of review and written approval, there does not appear to be a basis for the Director of OEP to find that Mountain Valley has complied with pre-construction conditions for purposes of Request for Notice to Proceed No. 5, as required by the Commission's rules.<sup>19</sup> Authorizing any construction in advance of review and written approval of these various plans, which the Commission relied on to find that the MVP Project would not have significant impacts on resources in Giles County and the surrounding area, would be premature.

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Newport Rural Historic District (GNRHD) in particular. *See* "Giles And Roanoke Counties' Request to be Consulted under Section 106 of the National Historic Preservation Act," eLibrary no. 20170802-5115 (Aug. 2, 2017), Attachment 2. According to the Yolton Report, the visual scars on the GNRHD will be particularly severe at (1) the Blue Grass Trail intersection of the GNRHD and Newport Historic District in downtown Newport; (2) the Mountain Lake Road entry points of the GNRHD, which are in steep, heavily wooded rural historic landscapes; and (3) Key Observation Points (KoPs) throughout the GNRHD.

<sup>17</sup> Certificate Order, Appendix C, pp. 7-9.

<sup>18</sup> *See also* letter from Roanoke County to Secretary Kimberly D. Bose, eLibrary no. 20180124-5060 (Jan. 24, 2018).

<sup>19</sup> *See* 18 C.F.R. § 375.308(x)(4).

### **III. CONCLUSION**

Giles County requests that the Director of OEP deny Mountain Valley's "Request for Notice to Proceed No. 5" and any future requests to proceed within the County pending resolution of pending rehearing requests and Mountain Valley's compliance with pre-construction Environmental Conditions.

Respectfully submitted,



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Attorneys for GILES COUNTY

**DECLARATION OF SERVICE**

**Mountain Valley Pipeline, LLC's Mountain Valley Pipeline Project (CP16-10-000)**

I, Emma Roos-Collins, declare that I today served the attached "Giles County's Answer in Opposition to Request for Notice to Proceed No. 5" by electronic mail, or by first-class mail if no e-mail address is provided, to each person on the official service list compiled by the Secretary in this proceeding.

Dated: February 1, 2018

By:



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