



FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 5, 2018

OFFICE OF THE CHAIRMAN

The Honorable Tim Kaine
United States Senator
Washington, D.C. 20510

Dear Senator Kaine:

Thank you for your January 5, 2018, letter regarding Mountain Valley Pipeline L.L.C.'s Mountain Valley Project (MVP) (Docket No. CP16-10-000) and Atlantic Coast Pipeline L.L.C.'s Atlantic Coast Pipeline (ACP) Project (Docket No. CP15-554-000) in North Carolina, Virginia and West Virginia. Your comments have been placed in the docket for these proceedings.

At any point in time, the Commission may comprise up to five commissioners. Establishment of a quorum requires at least three commissioners, which is a requirement for the Commission to vote on proceedings. On October 13, 2017, when the Commission had a quorum consisting of three commissioners, the Commission approved both the MVP and ACP Projects. Although the decision on those projects was not unanimous, it was a Commission approval that remains valid without regard to the number of commissioners present today.

With respect to your concerns regarding rehearing and tolling orders, per Commission regulations, in the absence of action on rehearing requests within 30 days, those requests for rehearing are deemed denied. The Commission routinely issues tolling orders for the limited purpose of affording the Commission additional time to fully address the matters raised on rehearing. The process avoids the automatic denials of rehearing that otherwise would result after 30 days, benefiting parties that have sought rehearing. Courts, including the First, Fifth, and D.C. Circuit courts of appeals, have upheld the validity of these tolling orders.¹

¹ *Kokajko v. FERC*, 837 F.2d 524 (1st Cir. 1988) (citing *California Co. v. Federal Power Comm'n*, 411 F.2d 720 (D.C. Cir. 1969); *Gen. Am. Oil Co. of Texas v. Fed. Power Comm'n*, 409 F.2d 597, 599 (5th Cir. 1969)); *Del. Riverkeeper Network v. FERC*, 243 F.Supp.3d 141, 146 (D.D.C. 2017).

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In addition, the Natural Gas Act is explicit in stating that unless the Commission grants a stay, a request for rehearing shall not operate as a stay of the Commission's order.² Accordingly, should the MVP or ACP projects receive all required federal authorizations, Commission staff may issue a notice to proceed with construction. To the extent that a project sponsor elects to proceed with construction of project facilities while rehearing or judicial review is pending, it bears the risk that the Commission will revise or reverse the initial decision or that the Commission's order will be overturned on appeal.

If I can be of further assistance in this or any other Commission matter, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. McIntyre". The signature is written in a cursive, flowing style.

Kevin J. McIntyre
Chairman

² 15 U.S.C. § 717r(c) (2012).

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