

TO: Senator Joe Manchin III
306 Hart Senate Building
Washington, DC 20515

Senator Shelley Moore Capito
172 Russell Senate Office Building
Washington, DC 20515

Representative Evan Jenkins
1609 Longworth House Office Building
Washington, DC 20515

Governor Jim Justice
Office of the Governor
State Capitol, 1900 Kanawha Blvd. E
Charleston, WV 25305

cc: Ms. Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, D.C. 20426
(filed via electronic submission)

FROM: Nancy and Wood Bouldin et al.
P.O. Box 172
Greenville, WV 24945

DATE: March 8, 2018

RE: **Request for Your Help to Ensure Due Process for West Virginia
Constituents regarding the Mountain Valley Pipeline, FERC Docket
CP16-10-000**

March 8, 2018

To: Senator Joe Manchin III
Senator Shelley Moore Capito
Representative Evan Jenkins
West Virginia Governor Jim Justice

cc: Federal Energy Regulatory Commission

RE: Request for Your Help to Ensure Due Process for West Virginia Constituents regarding the Mountain Valley Pipeline, FERC Docket CP16-10-000

As concerned constituents from Monroe and Summers Counties, West Virginia, we ask you to exercise the powers of your office to protect West Virginians' right to due process.

Our properties lie near the proposed Mountain Valley Pipeline route. We know many individuals and families whose land is directly on the pipeline corridor in our counties and beyond, in both West Virginia and Virginia. We have seen and shared the relentless pressure that has been brought to bear on these neighbors and our communities since 2014 by the juggernaut gas and pipeline industry.

We also know that each of you has voiced support for this pipeline. However, we hope that you still believe in protecting the constitutional rights of your constituents.

We call on you to urge the Federal Energy Regulatory Commissioners (FERC) to uphold the right to due process. FERC should:

1. Schedule a Rehearing of the decision to grant a Certificate of Public Convenience and Necessity to the Mountain Valley Pipeline (MVP), as rightfully requested by multiple parties in accordance with FERC's procedures for appeal, and
2. Issue an immediate halt to tree-cutting and construction until such a Rehearing has been concluded.

Why is a Rehearing of the Mountain Valley Pipeline Certificate needed?

First: **Challenges to the grant of authority of eminent domain to MVP have not been adequately considered by FERC or any other authority.** The extraordinary power of eminent domain must only be deployed when there is a clear and justified case that its use is in the public interest. The intention of the Natural Gas Act was to ensure that U.S. consumers have access to an adequate supply of natural gas at reasonable prices. Significant questions were raised about the evidence of market need in MVP's application at the time of certification, and growing evidence indicates that the likely destination of MVP gas will be for export and the likely impact of MVP gas will be to increase domestic gas prices. The crucial issue of public need has never had a public hearing.

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Second, but equally important: **The due process rights of your constituents are being violated by FERC's persistent delay in making a decision on a Rehearing.** The courts will not consider an appeal that the Certificate was issued improvidently until FERC grants or denies the Rehearing challenge. Meanwhile, MVP is proceeding with construction despite the pending administrative appeal.

- On October 13, 2017, FERC Commissioners approved a Certificate of Public Convenience and Necessity for the Mountain Valley Pipeline in a rare 2-1 decision. In her dissent, Commissioner LaFleur expressed concerns both about significant environmental impacts and about the majority's "narrow" reliance on the existence of "precedent agreements" (shipper contracts) to determine need. In the case of MVP, where only 13% of the capacity is contracted to end users and almost all the agreements are with affiliates of MVP's own joint venture partners, the ultimate destination of most of the gas is "unknown". (A copy of Commissioner LaFleur's dissent is attached.)
- By November 13, 2017, within the 30-day deadline for requests, more than 20 formal Requests for Rehearing were submitted and remain unresolved at FERC.
- On December 13, 2017, FERC issued an "Order Granting Rehearings for Further Consideration"—which neither denies nor grants a Rehearing.

The twisted legalese of FERC's December Order (aka a "tolling order") works to allow MVP to begin construction while avoiding the explicit rejection of a Rehearing. In effect, FERC's calculated inaction on the rehearing challenge empowers MVP while denying your West Virginia constituents' due process for defense of their property rights.

We ask you to take this request seriously because the extraordinary power of eminent domain is being exercised by Mountain Valley Pipeline, LLC against hundreds of landowners in West Virginia and Virginia to install a 42-inch gas pipeline across unprecedented mountainous terrain. We have seen firsthand the threat of eminent domain used against our neighbors, and we believe hundreds more were similarly misled, pressured and intimidated to sign easements against their inclination and best interests.

The landowners who are standing up for their property rights against FERC's granting eminent domain to MVP are not outside agitators or so-called activists.

They are 80-year-olds who have lived on their multi-generation family properties their entire lives and hope to pass on that legacy to their great-grandchildren. They are people who have invested their life savings and labor to build the homes and farms they've always dreamed of.

They are our neighbors—local farmers, family doctors, teachers, pastors, entrepreneurs and other hard-working Americans—Republicans, Democrats and Independents—who

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have invested themselves in their community and who deeply value their land, their trees and their water in a way that outside investors and corporate executives cannot begin to imagine. We hope you still are connected enough to your roots to know what we mean.

We are not asking you to “stop” the pipeline. We are asking you to call for fairness and due process. West Virginians and Virginians have a constitutional right to a prompt Rehearing decision regarding the FERC’s Certificate for the Mountain Valley Pipeline and a halt to tree-cutting and construction until a Rehearing decision has been properly adjudicated.

Respectfully,

Nancy and Wood Bouldin

P.O. Box 172, 240 Wayside Creamery Rd, Greenville, WV 24945

We are joined in this request by neighbors of affected landowners on the MVP route in Monroe and Summers Counties, West Virginia:

Wanda and Dannie Buchanan, Lindside, WV

Nancy Guile, Ellison Ridge, Greenville, WV

Rev. Catherine Rolling, Greenville, WV

James R. McGrady, Hans Creek Road, Greenville, WV

Howdy and Suzie Henritz, Hans Creek Valley, Greenville, WV

Dorothy W. Larew, Greenville, WV

Michael & Cathi Biggs, Back Valley Road, Lindside, WV

Robert Chamberland, The Narrows of Hans Creek, Greenville, WV

Linda Shoupe, The Narrows of Hans Creek, Greenville, WV

Herman and Paula Mann, Ellison Ridge Road, Greenville, WV

J. W. and Irene Larew, Hans Creek Road, Greenville, WV

Warren and Judy Ellison, Hans Creek Road, Greenville, WV

Ty and Susan Bouldin, Pence Springs, WV

Brian and Elizabeth Kirk, Pence Springs, WV

Ashofteh and Reinhard Bouman, Green Sulphur Springs, WV



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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.¹ 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.² 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

¹ *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.).

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



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further evidenced by the Commission acting on them concurrently today.³ 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.⁴ 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"⁵ due to the significant time for the planning and design that would be necessary to develop a revised project proposal.⁶

"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.⁷ 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."⁸

"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.

³ 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.

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

⁵ *Id.* at 3-9.

⁶ 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.*

⁷ MVP FEIS at 3-14.

⁸ *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.⁹ 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."¹⁰

"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."¹¹ 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.¹² I fully realize that a broader consideration of

⁹ ACP FEIS at 1-3.

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

¹¹ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,744.

¹² 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.¹³

“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.”

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

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