

**TO:** Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission  
Chairman Kevin J. McIntyre, Commissioner Cheryl A. LaFleur, Commissioner Neil Chatterjee, Commissioner Robert F. Powelson, Commissioner Richard Glick

**FROM:** Thomas Bouldin  
Pence Springs, West Virginia

**DATE:** March 29, 2018

**RE:** Mountain Valley Pipeline  
CP16-10-000

The necessity of proceeding to schedule Rehearing as requested by multiple parties of the decision to issue a Certificate of Public Convenience and Necessity to the Mountain Valley Pipeline

## **The Necessity of Proceeding to Schedule Rehearing, as Requested by Multiple Parties, of the Decision to Issue a Certificate of Public Convenience and Necessity to the Mountain Valley Pipeline**

I write in support of the comment recently submitted to the docket for the MVP application by Mr. David Witt in which he articulates his objections to FERC's continuing support and advancement of the Mountain Valley Pipeline Project, despite the numerous shortcomings and challenges facing ongoing approval of that application. Like Mr. Witt, I have been a long-term critic of the MVP proposal, and from my first posting to this docket in January 2015, I have tried to describe the argumentative shortcomings and potentially compromising oversights that have marred the agency's responses in handling the application. In the present comment, I want to summarize some of my major concerns and objections as **I follow Mr. Witt and others in supporting requests for a timely Rehearing of the decision to approve the Mountain Valley Pipeline application and for a stay of all construction activity involving tree cutting and other forms of irreparable harm to landowners, communities, and the environment until such a Rehearing has been concluded.**<sup>1</sup>

I wish especially to address this comment to Chairman McIntyre, Commissioner Chatterjee, Commissioner Powelson, and Commissioner Glick, insofar as I am referring to agency actions and public responses that took place prior to their assuming active duties on the FERC (other than the votes in favor of the MVP by two of those named), and of which they may have little first-hand knowledge. A reading of the materials I've referenced could shed some light on the requests the Commission has received for a timely Rehearing of the decision to approve the MVP. Commissioner LaFleur is fully acquainted with the issues I raise and has expressed her own position on my central concerns quite effectively.

At present, how do things stand with the MVP application? After several years of research, FERC has concluded that the only significant environmental damages posed by the project involve the destruction of forests. FERC has also concluded that there may be some significant flaws in the agency's procedures for evaluating pipeline applications and has conceded that a serious re-evaluation of these procedures needs to be undertaken. In addition, FERC has acknowledged that the commission needs additional time to consider the more than 20 requests for rehearing of the approval of the MVP application -- that is, additional time to consider citizens' and environmental organizations' analyses of the impacts of the project and

---

<sup>1</sup> In this comment I have identified those papers submitted to the FERC dockets for the MVP application that demonstrate the factual basis and details of the claims made in this comment. These references include the Docket Number (PF15-3 for the pre-filing period of the application, or CP16-10 for documents submitted after the formal application from MVP was accepted by FERC). These numbers are followed by the Document Number that allows the reader to access the referenced text in FERC's E-library. Thus Mr. Witt's comment is designated as CP16-10--#20180308-0008. In cases where I refer to texts not appearing in either docket, I have included more detailed references so that a reader can review the basis for my claims.

to respond to legal challenges on a wide range of issues. **Finally, FERC has granted MVP permission to begin pre-construction on the project (despite there being no final decisions on these weighty matters) -- by undertaking the one form of work the agency concedes will cause significant harm: cutting trees as they initiate construction.** Our nation is in serious need of help if this pattern of decision-making is typical of Federal agencies.

FERC's approval of the MVP application has met with intense public opposition and a number of pertinent legal challenges. It is not at all clear that FERC has been able to demonstrate persuasively that the project is in the public interest. This failure seriously undermines public acceptance of FERC's decision to saddle a substantial group of American ratepayers -- *as yet un-estimated in number and certainly unidentified beyond residing in a region the proposing corporations claim as their captive markets* -- with the burden of repaying the corporate sponsors of the project the costs of the project plus a 14% return on their investment. There is another group of citizens -- unidentified and unacknowledged -- who will be obligated with the costs of repairing -- or accommodating the nation to -- the damages resulting from the additional use of fossil fuels required by approval of the MVP proposal. None of these future rate- and tax-payers has been shown to *want* any such role in the investment strategies of EQT's and Next Era's management team and stockholders.

Like many other citizens who have expressed opposition to the MVP, my wife and I grew up in a time when public schools in the United States taught required courses in "Civics" and in "American Government" -- courses intended to impress upon young people the dignity and revolutionary power of American democratic institutions "with liberty and justice for all." It is unfortunate that the FERC process has seriously undermined many citizens' faith in at least one of these institutions, and that it has called into question the operation of justice itself. Such a possibility was one of the major concerns I articulated in my first submission to the FERC docket.<sup>2</sup>

### CLAIMING JUSTICE FOR APPALACHIA

My most basic and deep-felt problem with the MVP proposal is my objection to EQT Corporation's assumption of some *inherent right* to appropriate and 'own' over 300 miles of Appalachian farm and forest land -- most of which is in private hands -- in order to extend a corporate empire involving billions of dollars in profitable assets, including access to a large portion of West Virginia's remaining gas reserves. I understand -- but still object to -- the fact that the Federal Government has more-or-less endorsed that claim as a 'right' through certain clauses of the Natural Gas Act of 1938 which extend to approved infrastructure projects the power of eminent domain. I object to the corporation's assumption -- and I object to FERC's complacent acquiescence in that assumption and to the agency's collusion in its political expression in the processes leading up to construction of the MVP. I am offended that FERC

---

<sup>2</sup> The comment appears as FERC Docket PF15-3, Document #20150126-5071.

should bring the weight of the Federal government to the support of multi-national corporations in an ill-conceived effort to appropriate the private property of American citizens, and I object to the processes of law that have enabled such a travesty of justice. I also object to the less-than-respectable strategies to which FERC has resorted in order to support MVP's poorly thought-out and ill-defended application.<sup>3</sup>

I object -- but I am not in any way surprised. Such assumptions as EQT's are, obviously, the historical reality of certain Eastern financial interests since before the Civil War. They are the stock-in-trade of American political history from the early 1800's forward through the New Deal and beyond, embraced as much by Western Virginia politicians as by the corporate financiers and social engineers of the great Eastern political establishment. Such assumptions and the actions they enable may very well be *monstrous* -- but they are the *commonplaces* of both the capitalist economic system as it has been practiced by extractive industries and the pseudo-democratic political system that has built its social power on the back of unrestrained capitalism's perversions of moral, political, and ecological truths and ideals.

The Western-most counties of the Virginia colony (and of other colonies such as Maryland, Pennsylvania, and New York) represented an immense potential wealth to colonial government in the form of land: millions of acres that could ultimately be developed into "productive" (i.e., tax-bearing) real estate property. For generations, the governments of the colonies (and later the states) were in the habit of simply awarding ownership of these lands to political favorites, in hopes that owners would see to the profitable development of these properties and enable the resulting increase of government wealth and power. Politicians at every level gave or sold access to the land to landlords (most of whom remained absentee), and governments and absentee landlords later sold the rights to the natural resources on and under these lands to corporations invested in the exploitation of the region's timber and mineral wealth.

All this gifting and graft took place in full knowledge of the presence of a substantial population of settled inhabitants of the Appalachian region, American citizens who lived by subsistence farming and trade that depended upon the forests of the region as the ecological base that supported their economic survival. The displacement of these people and the destruction of their way of life--like the very similar displacement and destruction of Native Americans--became a matter of local, state, and national political policy as Eastern urban and industrial interests came to see the natural resources of Appalachia as the cheapest and most

---

<sup>3</sup> The proposed route is in some ways the perfect emblem of the Corporation's arrogance, violating numerous standards proposed by FERC and NEPA, systematically violating landowners' holdings in severely impoverished counties where opposition is least likely to arise. A full treatment of the shortcomings in the overall design of the MVP route is presented in CP16-10, #20161221-5063, and a supporting discussion of the significant impacts necessitated by the chosen route, together with NEPA guidelines identifying these impacts to be avoided, appears in #20161205-5233. **It is deeply problematic that FERC's procedures fail to provide a way to propose significant improvements by redesign to a route once proposed -- or to suggest another alternative altogether, or to comparatively assess comparable alternative routes in a single geographical area.**

available fuel for the expansion of American industrial capitalism made possible by the extraction of natural resources -- first timber, then coal, and now natural gas.

The national campaign against the residents of Appalachia first peaked with the almost total destruction of the virgin Appalachian forests between the 1880's and the First World War, continued through the overlapping exploitation of the area's coal resources (culminating in mountaintop removal mining), and now fastens to the area's natural gas reserves only recently made accessible through the technology of "fracking". But for all this time, benefits to corporate interests and the "modern" consumer economy of the nation have been bought at the price of the environmental and social devastation of Appalachia.

At the first local Open House held for MVP in Hinton in 2014, I was talking with a young man who claimed to be a lawyer for MVP/EQT (he had no identifying name card). At one point in our tense exchange of opinions, he remarked with a smirk and a shrug of his shoulders, **"Some of you must suffer so that others may profit."** That, of course, is exactly the smug attitude which makes the region's destruction so easily-rationalized by FERC, EQT, Next Era, and a host of other corporate 'interests'.

The campaign against Appalachian self-sufficiency has succeeded in part by turning the region's politicians against the interests of the region and its own people. As related in *Ramp Hollow: The Ordeal of Appalachia* by historian Steven Stoll,<sup>4</sup> West Virginia's Governor McCorkle, in his 1892 inaugural address, celebrated the state's traditions of self-sustaining independence. "I am for the people and in favor of all legislation which will curb and restrain corporate influences from interfering with the rights of the people." But by the 1920's, he had acknowledged that his entire administration had been "directed almost solely to...the advertisement of the state to the great national constructive interests...(to) advertisement and exploitation." Professor Stoll comments on this admission: "Perhaps no political leadership anywhere in the United States or the Atlantic World ever exposed its own people and environment to the same unbridled destruction and abuse."

And yet, more recently, during the three and half-years of processing the MVP proposal, West Virginia's newly-elected coal-baron billionaire governor announced that his administration would not willingly say 'no' to any industrial applicant<sup>5</sup> (to any "constructive interest?"). Perhaps at this directive, the newly appointed Director of West Virginia's

---

<sup>4</sup> The general history of Appalachian exploitation presented here (and in several of my previous comments to FERC) is developed in compelling if horrifying detail in Stoll's *Ramp Hollow: The Ordeal of Appalachia*, Hill and Wang (a division of Farrar, Straus and Giroux), 2017. The specific materials on McCorkle appear on page 140, and a serviceable recipe for cooking ramps on pages 142-143. For my other discussions of cultural aspects of the MVP proposal, see PF15-3 #20150616-5168, and CP16-10, #20161222-5213.

<sup>5</sup> See <http://governor.wv.gov/News/press-release/2017/Pages/Full-Transcript-of-2017-State-of-the-state-Address.aspx>. **The Governor mocks the state's regulatory monitors, indicating he would have them greet industrial workers on site by assuring them, "We're going to try with all that's in us to do what you want to do." In developing the implications of his position, he states "...we are not going to just say no." The implication is fairly clearly to green light projects like the MVP.**

Department of Environmental Protection (a long-time consultant to the coal industry and scion of his family's West Virginia coal company holdings)<sup>6</sup> simply waived the agency's right to evaluate the MVP's effects on water quality in West Virginia<sup>7</sup>, following a law suit challenging the agency's earlier, inadequate (and potentially illegal) assessments of the project's environmental impacts.<sup>8</sup> These political worthies are joined by a legislature that has repeatedly attempted to subvert the rights of landowners, most recently in the form of a 'forced pooling' bill that would require resisting landowners to submit to the corporate appropriation of their mineral rights if a majority of their neighbors had already done likewise.<sup>9</sup> Given the Governor's preferred "down-home" political persona, it's a little surprising he didn't refer to "calling the hogs". The folks in the gas industry heard him nonetheless -- and they understand what's being offered. Thus, it seems that even the state's elected officials are dedicated to the old colonial policy of giving the land and its resources as political favors to those exercising economic power and who might promise some economic return to the ruling elite, and temporary employment to the rest of us.

In may come as a surprising fact to many reviewers of the CP16-10 Docket that Appalachian culture has long included the cultivation of an ideal of service to the nation. It is partly that ideal that has resulted in West Virginia's relatively high rate of military service per population during the last 150 years. The ideal helps account for the pride of Appalachian coal miners who accepted their dangerous working conditions and high accident rates as the price that must be paid to "Keep the Lights on in America" (as the public relations' slogan put the matter). It also helps to explain the large number of comments to the FERC docket for the MVP which include references to a family's military service to the nation as a way of credentialing the commenter's good character and concern for the public good. But the sad truth is that if neo-liberal capitalism continues to be 'unleashed' to feed itself, poorer citizens (and all those without capital to invest as body armor) will find that they -- and the natural resources upon which they depend -- continue to be the fodder and fuel that nourish the economic growth of distant others, while they themselves remain the discarded and the dispossessed.

What I see as FERC's abusive program of infrastructure development -- as it has been revealed through the MVP certification process -- is simply a direct extension of more than one-hundred-and-fifty years of systematic exploitation of the region. It depends on the same

---

<sup>6</sup> See [frackcheckwv.net/2017/01/30/new-wv-dep-secretary-austin-caperton...](http://frackcheckwv.net/2017/01/30/new-wv-dep-secretary-austin-caperton...)

<sup>7</sup> See <https://www.wvgazette.com/special-reports/marcellus/wv-dep-waives-review-authority>. For a slightly different take on the decision see [Naturalgasintel.com/articles/123001--west-virginia-reverses](http://Naturalgasintel.com/articles/123001--west-virginia-reverses) (an article appearing on November 1, 2017).

<sup>8</sup> A suit was filed in March 2017 challenging WVDEP's approval of MVP's water quality permits. For local coverage of the suit's effects see [roanaoke.com/business/new/law-firm-disputes-w-va-water-quality-permit-for-pipeline](http://roanaoke.com/business/new/law-firm-disputes-w-va-water-quality-permit-for-pipeline), **April 11, 2017**.

<sup>9</sup> The state legislature has considered such a bill (and has considered many others favoring corporate convenience over residents' rights) for the last several years. On the 'forced pooling' issue see [wvpublic.org/term/forced-pooling](http://wvpublic.org/term/forced-pooling); also [wvmetronews.com/2017/04/03/landowners-claim-senate-bill-gives](http://wvmetronews.com/2017/04/03/landowners-claim-senate-bill-gives) and [frackcheckwv.net/2018/01/28/so-called-\"co-tenancy-bill\"-again-under-consideration](http://frackcheckwv.net/2018/01/28/so-called-\)

arguments that have always underpinned that exploitation: the region's resources are absolutely crucial to the happiness and welfare of other parts of the nation (now especially its energy corporations and their stockholders); the supposed backwardness and poverty of the region's people can be miraculously cured by the growing wealth brought by industrialization; and the modernization of the region will confer upon the residents all the benefits of modern civilization (depending on the era, these have included everything from modern highway systems to "highspeed internet and social media").<sup>10</sup>

The enduring damages to the region's environment and social structure are ample proof of the lies on which these arguments are constructed. The wide-spread *poverty and unemployment* (which have always regularly followed the escape from financial liability of industrial firms that exit the region at the first sign of declining profits); the terrible *health crises* -- from black-lung disease to opioid addiction -- affecting residents of the area; the long-term *out-migration* of many of the most talented and best-equipped citizens: such problems have faithfully accompanied the boom-bust structure of industrial economic exploitation -- each successive wave serving to deepen the agonies of those who choose to remain in the area, or those who are too poor to leave. **If ever there was a case for "Environmental Justice," if ever there was an instance of "cumulative environmental impacts" justifying a refusal to sanction further ill-conceived and ill-regulated industrial development -- it is here in the Appalachian counties of West Virginia and Western Virginia.** However, despite articulate requests in public comments,<sup>11</sup> FERC's final environmental study provides no assessment or consideration of these impacts -- which extend their influence from the distant past directly into the region's future.

And yet, as the opposition to the MVP has clearly shown, some things have been changing in Appalachia. There was a time when extractive industry could assume that the rural population of Appalachia consisted almost entirely of small-holdings farmers, coal-mining families, and the small-town merchant and professional classes needed to mediate between the region's population and the larger society. But as any reading of the FERC docket for the MVP quickly reveals, this is no longer reliably the case. The opponents of the MVP project include large numbers of farm families -- some working multi-generation holdings, some developing more recently-established organic farming operations with expanding clientele for their products, and some working small plots of land to supplement income earned from jobs in the local industrial-consumer-based economy. There are also considerable numbers of 'newcomers' to the region, including those who came during the late Twentieth Century in pursuit of a consciously-chosen 'back-to-the-land' rural lifestyle. There are more recent

---

<sup>10</sup> For the promises of material benefits vaunted by the corporate backers of the MVP see the discussion of the FTI report and its authors' disclaimer of validity, in CP16-10, 20170210-5009; while the comment concerns treatment of economic issues in the Draft Environmental Impact Statement, much of what is contained there remains true of the FEIS as well.

<sup>11</sup> My own requests are expressed as early as PF-15-3, #20150601-5184, and #20150616-5168, and are extended in the CP16-10, #20170210-5009.

additions to the population: some of these people (like my wife and I) were native to the region and returned 'home' to retire after professional lives elsewhere. Others are from other parts of the country entirely -- but they migrated here for retirement as an expression of their most deeply-held values and a free choice to escape from an urban/suburban industrialized life. And a substantial number of the MVP's opponents are professionally-trained and employed scientists who live in the impact zone of the proposed pipeline, like those living near Blacksburg and Virginia Tech. None of these individuals is impressed with the excuses, the claims of benevolent change, improvement, and benefit offered by FERC and MVP's spokespersons -- and many of these articulate opponents have sufficient experience of the region, as well as the professional qualifications, to expose the failings of MVP/FERC's ill-considered defenses.

Such a varied population presents a far more experienced and challenging opponent to any government-supported corporate take-over of the region. It does appear that FERC has been faced with a far more articulate and sophisticated opponent than either they or MVP expected to meet. The varied groups of residents, who might seem at odds on some matters of value and belief, have clearly made powerful common cause, and the increasing number of legal challenges they have presented are persuasive evidence of this more determined opposition to corporate appropriation, clearly being abetted by what many citizens regard as government collusion. And even more telling evidence of the change lies in the ever-increasing number of significant legal victories MVP/FERC's opponents have recently won. Given these shifts, there seems to be at least some chance for a legal redemption of Appalachia's claims to justice.

### **FERC'S CORROSIVE ABUSE OF AUTHORITY**

The entire process by which the MVP has been evaluated, approved, and advanced has revealed the compromised nature of the authority exercised by a regulatory agency whose work is entirely financed by -- and, in many situations, actually conducted by -- the very corporations the agency is meant to regulate.<sup>12</sup> As so many of us have learned in the three-and-one-half years of opposing the MVP, there is widespread concern about the 'too cozy'

---

<sup>12</sup> The FERC website regularly posts the agency's annual reports, which proudly confirm that all the fine work done by the Commission is essentially free to the taxpayer since the regulated industrial concerns pay for the entire budget through fees and fines levied in the course of the fiscal year. Additional resources from industrial applicants cover the costs of third-party contractors who perform numerous tasks for the evaluation of their employer's applications. Third party contractors are hired by--and paid by--the applicant but are 'supervised' by FERC employees. Tasks assigned to third party contractors may include such things as reading comments, classifying, and reporting comments from the public, identifying and reporting needed research, conducting that research, reporting and writing up that research for approval by FERC supervisors. The FERC "Handbook for working with third-party contractors to prepare Environmental documents" states; "If essential information, critical to the integrity of OEP's environmental document, is found missing from the applicant's environmental report and related documents, the 3PC (third party contractor) will be directed by OEP staff to acquire the missing information in one of two ways. The OEP staff will instruct the 3PC to either:

- prepare a data request, which the staff will review and forward to the applicant to obtain the information; or
- perform supplemental studies or data gathering needed to acquire the missing information." The handbook can be accessed at <http://ferc.gov/industries/hydropower/enviro/tpe/tpe-handbook>.

relationship between the government agency and the industry, with employees easily moving from one venue of employment to the other, creating at least the appearance of improprieties that could undermine the objectivity of regulatory judgment.<sup>13</sup> And there are numerous instances of agency regulations and procedures that clearly favor the corporate applicant above any constituency of mere citizens expressing opposition to corporate ascendancy.<sup>14</sup>

Far too much of FERC's public stance reveals an autocratic attachment to agency authority and a willingness to impose agency decisions without much concern for even the appearance of respect for citizen input or for the sort of principled rational argument required by the National Environmental Policy Act. This is true of many of FERC's interactions with the public, ranging from the conduct of public meetings (some purposely structured to minimize the participating public's knowledge of whatever information is exchanged between the agency and testifying citizens), to the framing of argument in published texts, to the use of "tolling orders" that deny concerned citizens any meaningfully-timely access to the authority of court decisions on the legality or propriety of agency actions. Everywhere there are evidences of FERC's determination to assert its authority in as unassailable form as possible to the obvious benefit of the agency's corporate sponsors: citizens are meant simply to submit to the agency's judgments and will -- no matter how arbitrarily these are formulated or how capriciously they are communicated to the public.

This was made quite apparent from our first face-to-face encounter with FERC's Project Manager for the MVP application. As citizens filed into the Lindside, West Virginia high school auditorium where the first regional scoping session was to be held, the project manager called the meeting to order, and when some of the people in attendance failed to respond as quickly as he would have liked, he demanded that they stop standing at the back of the auditorium and be seated -- or he would cancel the meeting immediately. He sounded exactly like an inept substitute teacher trying to assert control over a rowdy high-school classroom.

But this trifling bit of condescension soon gave way to more significant forms of high-handedness: shortly thereafter the project manager interrupted a citizen speaker to inform the assembly that there was a 'false rumor' being circulated that MVP would likely be selling its gas overseas. He then instructed those in attendance that they were not to credit this rumor

---

<sup>13</sup> See for example the Center for Public Integrity article on issues facing the Marcellus Gas Field boom, <https://www.publicintegrity.org/2017/07/17/20982/natural-gas-building-boom>; also earlier articles such as "For FERC's Sake Regulate," <http://inthesetimes.com/article/for-fercs-sake-regulate> (March 30, 2015.)

<sup>14</sup> Some examples include: extensive support sessions (including weekly informational conference calls) for the applicant in developing and revising application materials -- but no such tutorial support for opponents or citizen commenters; extraordinary tolerance for inaccurate or misleading submissions, including directives for their revision, additional research needed, and acceptance of deadlines that preclude citizen commentary (with no comparable allowances for citizen comments); and the numerous lists in the DEIS and FEIS of 'post-decision' submissions that include information crucial for public assessment and advisement.

because FERC would have to specifically authorize such activity for it to occur.<sup>15</sup> Like any other regime determined to control public expression, FERC subsequently found it expedient to *repeat this half-truth for some time*. The assertion appears in both the draft and final versions of the Environmental Impact Statement despite very clear demonstrations that the project manager's claim obscures any number of ways in which FERC could step around any restriction: MVP gas could be used by EQT and its corporate partners to replace existing supplies that would then be directed overseas, or FERC could subsequently authorize direct overseas sales from the MVP should the domestic market prove an undependable source of corporate profit.<sup>16</sup>

The agency's abuse of authority corrupts even its use of scientific argument. For example, the project manager's obvious impatience with -- and condescension for -- citizens opposing the project found expression in the Draft Environmental Impact Statement where opposition from citizens was quoted only to be contemptuously and peevishly rejected: "Unfortunately, the commenter does not provide any statistical support for this opinion."<sup>17</sup> Despite the demand that citizens provide statistical evidence and other types of formal documentation, FERC's own arguments, in fact, contain large numbers of utterly unsupported and highly un-scientific claims -- ranging from undocumented assertions about the insignificance of environmental impacts likely to proceed from the project to exaggerated claims of the project's social and economic benefits based almost exclusively on materials supplied by the applicant and which bear a warning that those preparing the report cannot vouch for the material's accuracy or truth.<sup>18</sup>

**FERC uses its power as an independent Federal agency to arbitrarily rule on the acceptability of evidence and argument and to impose its own conclusions -- whether these are adequately proven or not. This abuse of authority is warranted, they claim, by legal clauses that require only that the agency 'consider' (in actual practice, that is, *refer to*) conflicting evidence and opinions. Thus, FERC seems to be able to legally vacate all standards of reasonable argument by (at most) simply paraphrasing an opponent's position and then saying, "We, however, disagree."**

---

<sup>15</sup> I first documented this exchange in CP16-10, #20120150126-5071; it was further substantiated by the official transcript of the Lindside Scoping Session, but the entry has apparently been deleted from the FERC dockets for the MVP application (at least I have been unable to retrieve the document during the writing of this comment).

<sup>16</sup> Later in the same meeting--which FERC maintained was called in order that FERC staff could hear the concerns of affected citizens--the project manager implicitly attempted to silence my comment (which I introduced as a set of questions about procedure relevant to writing comments to FERC) by stating that the agency would answer no such questions until the final EIS was released.

<sup>17</sup> See, for example, the DEIS, pg. 4--284-285, where FERC dismisses the opinions of experienced local realtors as to the probable impacts to property values--on the grounds that the letters do not present any "facts or data". Yet the agency remains strangely silent about formal argument when it receives extensive and detailed analyses of the design errors and limitations of gas-industry-supported studies of property values (such as the comments submitted by Charles Chong evaluating the DEIS and FEIS studies of property values. See, for instance, PF15-3, #20150520-5042, # 20150803--0052; and also CP16-10, #20170915--5018).

<sup>18</sup> Further discussion with specific examples can be found in CP16-10, #20170210-5009, and # 20161222-5213.

## FERC'S SELF-SERVING NOTION OF SCIENCE

One possible explanation for FERC's off-handed authoritarianism may lie in the fact that the MVP application has been strewn with "bad science" -- discussions that claim the form of scientific analysis but are devoid of rigorous evidence and reasoning. (A recent Federal court ruled that the agency's treatment of science was inadequate in a case related to its handling of the climate effects of the expanded exploitation of natural gas.<sup>19</sup>) In other cases, citizen comments and other forms of documentation have revealed serious inaccuracies in FERC/MVP's reporting of scientific data, but these errors and misrepresentations have done nothing to influence FERC's approval of the proposal. For instance, MVP seriously underestimated potential stream scour in the Greenbrier River basin by reporting highly misleading data on river flow rates and watershed acreage, yet FERC was unconcerned and allowed the corporation to submit an untimely correction of their estimates of this crucial factor for designing safe stream crossings.<sup>20</sup> Similarly, MVP commissioned a study of potential environmental damages to the Jefferson National Forest in which even the authors of the study acknowledged serious design flaws that negated a large number of the conclusions presented: but the Forest Service (and subsequently FERC) accepted MVP's proposal even before the corrected data had been submitted -- data that still suggested unacceptable levels of sedimentation would be a likely result of construction.<sup>21</sup> Despite repeated citizen requests for detailed site-by-site data on stream crossings,<sup>22</sup> FERC's process has never required the collection of such data *by any government body participating in the approval process*, and unless various courts rule against FERC, it is possible that final approval will come without anyone in the chain of command having an accurate sense of what is at stake in the more than 1,000 stream crossings required by the MVP project.<sup>23</sup> Indeed, it seems clear that those controlling the process do not wish to have such information. Similar inadequacies in MVP/FERC's handling of cultural and historic resources are still being disputed in the project docket by attorneys representing affected residents and communities.<sup>24</sup>

---

<sup>19</sup> See, for example, [www.southernenvironment.org/news-and-press/press-releases/federal-court-rules-ferc-must-consider-greenhouse-has-emissions-from-pipelines](http://www.southernenvironment.org/news-and-press/press-releases/federal-court-rules-ferc-must-consider-greenhouse-has-emissions-from-pipelines) (August 22, 2017).

<sup>20</sup> See CP16-10, #20160502-5052, which provided the first objections to MVP's highly unprofessional and inaccurate predictions of scour, and also CP16-10, #20170228-5216, a much later comment which points out continuing errors and deficiencies in MVP's 'corrected' discussions of the issue.

<sup>21</sup> For a full discussion of the Jefferson National Forest study, and abuses of that study by both FERC and MVP, see CP16-10, #20170907-5076.

<sup>22</sup> My own repeated requests for such detail begin with PF15-3, #20150126-5071 and include PF15-3 #20150603-5082, CP16-10 #20161207-5092, #20160809-5230 and #20160318-5172 which summarizes other agencies' guidance for crossing designs which document the basis for my concerns for site-by-site analyses.

<sup>23</sup> To my knowledge the most detailed listing of stream crossing data available from FERC is contained in the appendices of the Final Environmental Impact Statement, and this appendix does not include any significant topographical and contextual information about the geology of site, soils, slopes or other relevant data. The crossing diagrams MVP has supplied since release of the DEIS are basically generalized "typical crossings" and the few, more detailed plans for major crossings lack information on crossing depth, soil types, depth to bedrock, etc.

<sup>24</sup> See for example, CP16-10, #20180308-5022, #201803055278, #20180305-5073, and #20180226-5131.

To a very disturbing degree, FERC seems to use scientific information in a "weaponized form" (to use a phrase currently popular in the press). That is, FERC-science is brought forward where it can be used to shoot down opposition to the project, but science as practiced by principled investigators is kept under wraps where the result could be a serious blow to MVP's claims. There are a number of places in both the draft and final versions of the Environmental Impact Statement where the text describes potential negative impacts from construction -- and even articulates the kinds of data needed to measure these impacts -- but then the text never provides the specific data relevant to the argument.<sup>25</sup> Indeed, it becomes clear that no such measures have been required or undertaken. Instead, FERC simply announces that none of this science is relevant because various plans and mitigation measures eliminate any concern. Yet there is nothing in the text which presents a detailed scientific demonstration of the effectiveness of these mitigation measures, and nothing that provides a quantitative estimate of whatever negative effects might escape the use of these measures (it being generally acknowledged in scientific studies of mitigation that no measure is entirely effective.).<sup>26</sup> **FERC's arguments are thus 'scientific' in appearance without being in any essential way scientific; they are, in many cases, simply sophisticated exercises in deception.**

Even on the most basic level of simple scientific illustration, FERC's approach is inadequate to effective documentation and communication -- especially when the information thus obscured could undermine positive impressions of the MVP project. The most obvious example is the absence of any maps that illustrate the interconnections between streams crossed by the MVP route. In some cases, as many as 30 or more crossings occur within a single watershed, yet FERC's documents contain no detailed visual representation of this destruction. Indeed, FERC's supposedly 'scientific' argument never deals in any substantive way with the cumulative impacts of multiple crossings within a given watershed.<sup>27</sup> **Instead, the 'impact' FERC evaluates is essentially only *theoretical*: the agency is concerned only with damage that *might occur at a single, supposedly representative, crossing site involving one typical crossing technique. The agency makes no attempt to quantify the resulting damage, choosing instead to assert that the effect (whatever it may be) will be *minimal* -- and implying that this minimal impact at one site cannot possibly have any effect on any other site, not even one***

---

<sup>25</sup> CP16-10, #20161017-5077 discusses the absence from FERC's discussions of objective measures of impacts. Also, see the DEIS, page 4-108, which involves a discussion of the factors to be examined in estimating "the increase in sedimentation carried downstream." Nowhere in the DEIS or the FEIS is there a table of measures of these impacts or of the variables required for the calculation of these factors for the stream crossings for the MVP project--not even for those perennial waterbodies to be crossed.

<sup>26</sup> These failings are discussed in more detail in CP16-10, #20170731-5294. In response to one criticism of this tendency, a note in the FEIS (a section devoted to responding to citizen comments) avoids the demand for evidence and instead points out high-handedly that the agency has many years of experience with these matters--and assumes this statement lays the matter to rest (see discussion of IND321 referenced below).

<sup>27</sup> Concerns about stream crossing procedures occupy the greater part of a number of my submissions including PF15-3 #20150426-5071, #20150417-5302, 20150603-5082 and 20150928-5282; the problems persist far into Docket CP16-10, #20161128-5167, #61207-5092, and the previously cited #20170907-5076.

**close by in the same stream or watershed. This is bad science, an unconscionable exercise of the willful neglect of empirical knowledge about cumulative effects.**

When available studies suggest negative impacts from construction, in some cases FERC simply ignores the conclusions presented. In extending their argument that no single crossing will have serious impacts on water quality, FERC states that sediment from any crossing will carry, at most, "...a few hundred feet downstream".<sup>28</sup> But in the study of the Jefferson National Forest commissioned by MVP, researchers conclude that impacts from construction in the forest can be estimated to carry as much 23 miles downstream in Virginia's Craig Creek, and as much as 8.7 miles downstream in the North Fork of the Roanoke River, despite the presence in this stream of an impoundment that should encourage most sediment to settle out of the water column.<sup>29</sup> **In this context it is important to note again that, while FERC relies on measures of single crossings taken in isolation to estimate potential impacts to streams, this is not scientifically defensible. All the various land disturbances in a watershed can be predicted to affect sedimentation in the streams draining that area, including the uphill portions of the right-of-way cleared to implant the pipeline in its approach to and exit from a crossing.**<sup>30</sup>

FERC's abuses of science are not restricted to the environmental and biological studies that could direct and possibly restrict the construction of the MVP. FERC also minimizes the methods and evidence from the social sciences -- including economics -- and chooses from these areas of knowledge only that which pleases their pro-corporate orientation. In dealing with the potential damage to subsistence households affected by the project, FERC never attempts to quantify residents' losses of productivity (damaged gardens and pasture, lost woodlots, reduced water resources). **Instead, the bizarre FERC argument is that the agency's staff have concluded that there will be no significant damage to any environmental resource (apparently forgetting their admission of the long-term damage to forests) and that these damages (being non-existent) will not affect "environmental justice" populations (which include ethnic minorities, and populations with high percentages of poor, aging and disabled citizens) to any greater degree than they affect the general population.**<sup>31</sup> Especially in light of some of the comments submitted by affected citizens, this non-argument about these non-effects would not pass muster even in a Freshman social science class room: despite its generalized descriptions of possible construction impacts, FERC knows *nothing specific* of the

---

<sup>28</sup> This claim appears in the FEIS, pg. 4-120 where it is accompanied by the optimistic assertion that turbidity will be resolved in 1 to 4 days.

<sup>29</sup> For further details see CP16-10, #20170907-5076.

<sup>30</sup> See CP16-10, #20160809-5230 discussing the Forest Service's critique of an early MVP study. The Forest Service's opposition to the earliest MVP data and their critique of the corporation's later submission can be found in CP16-10 #20160311-5013.

<sup>31</sup> See CP16-10, #20161222-5213 for a detailed discussion FERC's non-argument defending the MVP on issues of Environmental Justice.

*actual living conditions* of affected residents -- and can therefore have no knowledge of the *actual effects* that construction may well have on the *actual properties* crossed by the pipeline.

As for FERC's economics, we need to emphasize that, despite the intrusive character of all regulatory agencies, the entire mechanism of the agency is premised on the "free market" philosophy of neo-liberal economics, yet the intrusion of *eminent domain* into the procedures of infrastructure development invalidates the very notion of "free market". In the actual conditions of FERC's decision-making, only the *corporate buyer* is free in any meaningful sense. The citizen *seller* may be neither willing nor free -- and may well conceive his/her 'rational self-interest' to be basically violated and essentially vitiated by the demand to sell. As a result, none of the supposed benefits to society of "economic transactions in a free market" can be thought to apply to MVP's easement transactions -- or any of the associated "induced" benefits thereof. FERC's entire conceptual system is rigged to the corporate advantage and benefit.

Moreover, there is something basically wrong when a regulatory agency aggressively and automatically approves 99.9% of the proposals it receives for exploiting reserves of ***non-renewable*** energy sources. Even the least-well educated original settlers of the Appalachians knew that if you hope to make it through a long, hard winter, you don't burn all your firewood before Christmas. However, such practical wisdom is submerged by the arrogance of FERC and current energy corporation economics which dictate that all investments must be turned over as quickly as possible since long-term predictions of the market are unreliable at best. EQT's gas holdings in West Virginia must be turned into money as quickly as possible, no matter who may be hurt, because the market for gas may prove far more volatile and far less receptive than is currently the case. Such a neo-liberal economic posture not only *justifies*, but positively *celebrates*, the suffering of 'some' as the necessary concomitant to the wealth enjoyed by 'others' -- and it is the same economic position that has justified the destruction of Appalachian culture and communities in the past, and that continues to fuel and justify the ongoing displacement of agrarian people all over the world.

All of these shortcomings are in direct defiance of the spirit and intention of the National Environmental Policy Act which calls on Federal agencies to use high-quality scientific data in decision-making so that proposed projects will embody the best use of scientific information to minimize environmental damage.<sup>32</sup> The ultimate goal of NEPA guidelines is to "protect, restore, and enhance the environment" (including human social interaction with the natural world) as it is impacted by Federally mandated activities. According to NEPA, the other use of this accurate scientific data is essentially educational: to provide the public and its decision-makers with a functional knowledge of relevant environmental issues as these impact public decisions. **FERC's handling of the MVP application is in many ways a mockery of the intentions embedded in the NEPA guidelines.**

---

<sup>32</sup> See CP16-10, #20161205-5233 and #20160909-5216 for applied discussions of the relevance of NEPA guidelines for evaluating FERC's procedural failures and shortcomings.

However, NEPA guidelines are clearly cut from the same political broadcloth as other legal restraints on corporate conduct, with enough loopholes, ambiguities, and omissions to allow Federal agencies more than enough 'wiggle room' to snake their way through to decisions favorable to corporate interests. As a result, FERC staff can sidestep any number of NEPA directives, in the same way that they can blithely wave aside negative citizen commentary with a simple "we disagree" -- whether or not the agency has any compelling evidence to support its position.

### FERC'S SUBVERSIONS OF DUE PROCESS

**As well as summarily dismissing the procedural and conceptual requirements posed by NEPA, FERC would appear to have set itself against fundamental legal expectations for due process in some deeply distressing ways.** For example, while acknowledging that the damages to forests resulting from MVP are both significant and enduring, FERC has refused to require MVP to commit to mitigation strategies that are both demonstrably more effective than those proposed by the corporation and are demonstrably practicable, having been used by other extractive industries in other contexts without excessive cost. Even FERC's own guidelines require the highest levels of mitigation that are practicable, yet the agency has set aside this concern in relation to the only significant environmental impacts it chooses to attribute to the proposed project. This offence is heightened by the fact that FERC's requirements for mitigation of negative impacts are largely based on legal -- rather than scientific -- requirements: FERC is far stricter about mitigation on Federally-owned lands where environmental responsibility is legally imposed, than on lands that are in mere *citizen's* hands; the overall effect is to greatly reduce the corporate burden for scientifically-justified repair of environmental damages.<sup>33</sup> (It is worth noting that Federal lands crossed by the MVP constitute less than 4 miles of the 303 miles of the project: thus the stricter requirements for the Jefferson National Forest constitute only 'minimal' environmental protection along the route.)

In rejecting the requirement for the best possible mitigation of forest impacts, FERC is playing out another of its standard practices in responding to the public. NEPA requires that the agency respond in writing to all substantive comments that are submitted in a timely fashion to the Final Environmental Impact Statement (FEIS). However, a review of the responses published alongside the FEIS shows that in many, many cases the agency's response ignores the substance of the criticism and simply refers the reader to a passage in the FEIS text which deals with the general topic of the comment. There is no data demonstrating any error in the criticism -- indeed there is nothing in FERC's response that even acknowledges the nature of the issues raised.<sup>34</sup> The failure of the agency to respond to the issue of forestland mitigation

<sup>33</sup> For a full discussion of the issue of forest damage and mitigation, see CP16-10 #20170725-5023, an extended analysis by Professor Carl Zipper which is described in the docket overview as "Adverse Effects to Forest are not minimized. Supplemental EIS is warranted." The author is a highly qualified academic scientist with substantial experience in planning mitigation and restoration activities.

<sup>34</sup> The issue of FERC's response to public commentary is treated in CP16-10 #20161222-5329. For specific examples of unacceptable FEIS responses, see CP16-10, #20170623-4000, Appendix AA, file 21 (responses to my comments

embodies exactly the same strategy: do not acknowledge any specific error or oversight, simply reassert the agency decision as an action that implies FERC has been right all along.

A more offensive and arrogant abuse of justice is found in the agency's use of tolling orders which effectively postpone decisions on citizens' requests for rehearing while enabling the agency to approve corporate requests to begin construction. Because FERC routinely takes the position that the Natural Gas Act does not allow judicial review until it rules on the merits of a request for rehearing, the "tolling order" thus effectively denies the citizen access to due process. In the case of the MVP, the situation is especially oppressive, since damages to forests are acknowledged by the agency itself as significant and long-term -- yet FERC has approved tree cutting prior to reviewing and 'rehearing' the agency's decision to approve the project. There could hardly be a better illustration of the pro-corporate bias of the agency: FERC's approval of MVP's request to begin tree felling sanctions the argument that the corporation would suffer irreversible harm if initial activities of construction are delayed, although this claim has been effectively disputed in court.

But what of irreparable harm to the environment? Once a forest has lost its trees, it is no longer a forest, so what reasonable person could object to turning the now-denuded landscape into an industrial zone? FERC's real justification, apparently, is that a sponsoring corporation has said it wants to cut trees and it wants to start doing that now. **Who cares if a few months down the road, FERC is forced to change the terms of its approval -- or perhaps even to consider rejecting the project altogether? By then many legal concerns will have been mooted, the feared damage already being accomplished, and the corporation and the agency may effectively have won a game they never even had to play.**

#### REHEARING: NECESSITY AND ADVANTAGE

As stated in the introduction of this comment, I am seconding Mr. Witt's support for a rehearing of the decision on the MVP. He indicates the need for such a rehearing on the basis of the as-yet unresolved legal challenges to both the proposal itself and FERC's procedures for approval. As I hope is clear by this point, I support Mr. Witt's claims of grounds for a rehearing. And I trust that this comment also makes clear some further grounds for the request: FERC's procedures have been inadequate to the point of being an insult to the proper expectations of

---

IND276, IND 292, and IND 321: in a total of 12 responses to sections of these three comments, there is not a single direct engagement with the issues raised. One response redefines a key term and thereby sidesteps the crucial issues I raised; all other comments refer to existing passages in the EIS that address the general topic of my comment, not the issues I ask FERC to confront. In Appendix AA, file 27, of 22 text-related responses, only two provide substantive information: response #6 asserts that **the outdated and misleading maps used by MVP in fact meet FERC requirements!** Response 21 addresses my request for a description of the training and supervision of third-party contractors who employ subcontractors by saying that there are no such subcontractors in use for the MVP project. All other responses avoid the critical issues I raise and simply refer to other passages in FERC texts which do not actually address the specifics on my complaints and objections, the overall effect being: "Well, we don't care what you say, we do it this way." That's an argument any third grader could articulate more compellingly.

a democratic citizenry, and a violation of any meaningful standards of rational inquiry. Our nation faces a major crisis if disagreements in a democracy cannot be resolved through rational argument and mutually agreeable compromise. The only alternative in such cases is the arbitrary imposition of a solution that favors one party or the other -- a decision that is a serious denigration of democratic governance, suggesting brutally enough the claim that only "might makes right." If neither scientific data nor reasoned argument are sufficient bases for decision-making, then government decisions are essentially arbitrary and capricious, and thereby the very essence of tyranny.

Given pending court challenges and the evaluations of the process presented in the docket by concerned citizens and highly qualified experts, a rehearing of the decision is clearly necessary from an intellectual standpoint. The broad constituency of our country cannot prosper if significant decisions affecting the health and safety -- as well as the economic well-being -- of the nation are made on the basis of misleading, insufficient, or inaccurate information, or by officials inappropriately biased in favor of powerful corporate interests.

The only way to demonstrate that such negative charges are not relevant to the MVP decision would be a **rehearing that reviews all the existing evidence, allowing for the cross examination of the agency's arguments in light of the testimony of citizens and various trained specialists.** Such a rehearing is virtually necessary to preserve the integrity of the decision-making process. It might also have the additional advantage of restoring some degree of public trust in FERC's capacity to render meaningful public service as a regulatory body.

The Federal Energy Regulatory Agency released a statement fairly recently acknowledging that mounting evidence suggests some undesignated aspects of the agency's working definitions, procedures, and standards may be in need of examination and revision. In common language, I think, this means FERC has acknowledged that the agency may have been making some inappropriate decisions, and/or using inappropriate standards or procedures -- perhaps as a result of changing technical, social and economic contexts for regulatory decisions.<sup>35</sup> At the time of this admission, there were at least two decisions before the commission: that on the Atlantic Coast Pipeline application, and that on the Mountain Valley Pipeline project. Work had not begun on either project.

The Commission freely expressed their reservations about the propriety of the decision-making apparatus in place in the agency. In such a circumstance the obviously appropriate thing to do would be to declare the decision-making apparatus insufficiently reliable to resolve the questions of approving the MVP and the ACP, both of which had been extensively challenged in the court of public opinion as represented in FERC dockets, as well as in courts of law. If the existing procedures are sufficiently suspect to require a full-scale re-evaluation in the near

---

<sup>35</sup> The substance of the decision and its implications can be found at <https://www.law360.com/energy/articles/1005859/split-ruings-show-appetite-to-change-ferc-pipeline-policy?nl>

future, why further their use in decision-making when neither project was yet authorized to proceed? The decision to approve these projects -- despite the admission of concern for the process of approval -- seriously undermines public confidence that the concerns about process are anything more than a public relations device by which the newly-installed commissioners hoped to postpone public opposition. And, of course, FERC's stated concern regarding the review process as currently practiced might simply mask intentions to use 're-evaluation' to eviscerate the NEPA-based process that has allowed so much public opposition to surface. The lesson of the decision to grant certification to the Mountain Valley Pipeline seems to be that no matter how flawed its procedures may be, the agency will continue to use them to award approval to proposals that pose serious risks to the public interest but are profitable for the proposing corporations.

The only way I can see to refute these fears about the integrity of the process is for FERC to immediately schedule a Rehearing on the decision while also suspending any further work on the MVP until the rehearing process is concluded. At the time of approval, one member of the Commission -- Commissioner LaFleur -- had the most extensive experience with the procedures used to evaluate the need for projects and their probable environmental effects, having recently served as the head of the Commission. The other two members of the commission at that time were entirely new to the processes involved, being recent appointments by an administration that has shown itself to be a resolute enemy of scientific demonstration and an unapologetic friend of corporate financial intentions. One needn't express surprise at the votes offered by the new members. However, the vote of the past Chair of the Commission -- the only voting member with extensive experience of the Commission's process -- is significant. Commissioner LaFleur has voted positively on many earlier applications, but in the particular case of the MVP and ACP applications she expressed serious concerns about the environmental impacts of these two, separate but significantly parallel proposals -- and she questioned whether there was a public need for both projects that could outweigh their damage to the environment and to affected citizens.<sup>36</sup> Such reservations from the only directly experienced member of the Commission certainly suggest that a rehearing would not be inappropriate.

A principled process of rehearing might have definite advantages for the Commission. Besides being an obvious and gracious admission of the public's right to some respect, a timely rehearing and suspension of tree-cutting until the process is concluded would provide an opportunity for the Commission to demonstrate that there were in fact compelling reasons for the decision made, even if staff had earlier failed to present these reasons in the published texts of the FEIS. A rehearing that systematically responded with compelling evidence to the charges levelled through cross-examination to the decision's conclusions and supporting evidence would provide a major refutation of the opponents' claims, showing their opposition

---

<sup>36</sup> Ms. LaFleur's statement of dissent from the majority opinion can be found at FERC CP15-554, #20171016-3010.

to be grounded in little more than an ideological difference that conflicted with the ideological commitments of the agency.

Of course, the Commission might find, in preparing their case for the rehearing, that various elements of the public criticism were perfectly justified. In this case, the rehearing process would give the Commission -- largely staffed by new appointees -- the opportunity to show that they were amenable to reason and willing to correct errors in judgment when these were adequately demonstrated by an examination of the facts. Such a demonstration of good will, while presenting a position weaker than a political appointee might wish, could at least save some scrap of respectability for a government agency that has suffered severe damage to its reputation -- and this in the context of a political environment sundered by negative impressions of the reliability and trustworthiness of government in general.

I therefore fully endorse the requests of Mr. Witt and others that FERC schedule a Rehearing of the decision to issue a Certificate of Public Convenience and Necessity to the Mountain Valley Pipeline, and I fully support the requests for a stay on pre-construction and construction activity until the process is concluded. This course of action presents the most acceptable and constructive possibility for resolving FERC's damaging and unfortunate commitment to a poorly-devised, badly supported, and unacceptably destructive proposal.

Sincerely,

Thomas Bouldin

Pence Springs, West Virginia

Document Content(s)

Request FERC\_Schedule Rehearing\_MVP.PDF.....1-19