

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Atlantic Coast Pipeline, LLC)	Docket Nos. CP15-554-000
)	CP15-554-001
Dominion Energy Transmission, Inc.)	CP15-555-000

**JOINT MOTION TO INTERVENE AND COMMENTS IN OPPOSITION
TO REQUEST FOR EXTENSION OF TIME**

BY

**ALLIANCE FOR THE SHENANDOAH VALLEY, APPALACHIAN VOICES,
CHESAPEAKE BAY FOUNDATION, INC., CHESAPEAKE CLIMATE ACTION
NETWORK, COWPASTURE RIVER PRESERVATION ASSOCIATION, FRIENDS
OF BUCKINGHAM, FRIENDS OF NELSON, HIGHLANDERS FOR RESPONSIBLE
DEVELOPMENT, PIEDMONT ENVIRONMENTAL COUNCIL, SHENANDOAH
VALLEY BATTLEFIELDS FOUNDATION, SIERRA CLUB, SOUND RIVERS, INC.,
VIRGINIA WILDERNESS COMMITTEE, WILD VIRGINIA, INC., WINYAH
RIVERS FOUNDATION, RICHARD AVERITT, RICHARD G. AVERITT III, AND
ROCKFISH VALLEY INVESTMENTS, LLC**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission (“Commission” or “FERC”) Rules of Practice and Procedure,¹ Alliance for the Shenandoah Valley, Appalachian Voices, Chesapeake Bay Foundation, Inc., Chesapeake Climate Action Network, Cowpasture River Preservation Association, Friends of Buckingham, Friends of Nelson, Highlanders for Responsible Development, Piedmont Environmental Council, Shenandoah Valley Battlefields Foundation, Sierra Club, Sound Rivers, Inc., Virginia Wilderness Committee, Wild Virginia, Inc., and Winyah Rivers Foundation (collectively, “Conservation Intervenors”) and Richard Averitt, Richard G. Averitt III, and Rockfish Valley Investments, LLC (collectively, “Landowner Intervenors”) move to intervene² and submit comments in opposition to the request by Atlantic Coast Pipeline, LLC and Dominion

¹ 18 C.F.R. §§ 385.212, 385.214.

² The Commission granted Conservation Intervenors’ and Landowner Intervenors’ respective motions to intervene in the underlying proceeding. *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at ¶ 19 (2017) (“Certificate Order”).

Energy Transmission, Inc. (collectively, “Atlantic”) for a two-year extension of time to construct and place into service the Atlantic Coast Pipeline and Supply Header Project (collectively, “ACP”).³

Three years since the Commission issued a certificate of public convenience and necessity for the ACP (“Certificate Order”), construction of the pipeline has barely begun. This long delay is the inevitable result of Atlantic’s ill-conceived route and failure to heed the advice of expert agencies, rendering their permits unable to withstand judicial scrutiny. The Commission must deny Atlantic’s request because (1) Atlantic has failed to demonstrate good cause for the extension; (2) significant developments since the issuance of the Certificate Order have undermined the Commission’s prior findings that the ACP is required by the public convenience and necessity and is an environmentally acceptable action; (3) an extension requires additional state certifications under Section 401 of the Clean Water Act; and (4) an extension would further burden landowners’ use and development of their property for a pipeline that may never be built.

I. COMMUNICATIONS AND SERVICE

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³ Letter from Matthew R. Bley, Dominion Energy Transmission, Inc. (“DETI”), to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (June 16, 2020) (eLibrary No. 20200616-5174) (“Extension Request”).

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II. INTEREST OF PROPOSED INTERVENORS

A. Conservation Intervenors

Conservation Intervenors are nonprofit organizations dedicated to preserving and enhancing the resources of the Southeast, which the ACP threatens to significantly degrade.

Building the ACP has already caused significant harm to resources along its proposed route in West Virginia, Virginia, and North Carolina. Continued construction and operation of the ACP beyond the Commission's original construction deadline would clear more trees, trench across federally protected lands, harm federally protected species, cross waterbodies over 1,000 times, and result in the emission of greenhouse gases. This environmental degradation—which, based on new information, would be more substantial than the Commission originally thought—would harm the interest of each Conservation Intervenor and would directly impact the public resources Conservation Intervenors work to protect. Accordingly, Conservation Intervenors' participation is in the public interest.

Alliance for the Shenandoah Valley is a 501(c)(3) nonprofit organization. Alliance for the Shenandoah Valley's mission is to maintain healthy and productive rural landscapes and communities, protect and restore natural resources, and strengthen and sustain the Shenandoah Valley region's agricultural economy. The Alliance is deeply concerned about the impacts of the pipeline, which will be constructed through headwaters, streams, tributaries, drinking water supplies, forests, neighborhoods, and farmland in the Shenandoah Valley. The ACP would degrade cherished public lands in the region as well as family farmland in Augusta County and multiple properties in western Virginia protected by conservation easements.

Appalachian Voices is a 501(c)(3) nonprofit organization dedicated to defending the land, air, and water of the Appalachian region from the worst environmental threats. If built, the ACP would harm countless family farms, national forest land, historic sites, and drinking water supplies in the Appalachian region. The ACP would also threaten the health and safety of individuals in the region and worsen the impacts of climate change.

Chesapeake Bay Foundation, Inc. is a 501(c)(3) nonprofit organization dedicated to saving the Chesapeake Bay by fighting for effective, science-based solutions to the pollution degrading the Bay and its rivers and streams, and protecting human health. The ACP proposes to cross Virginia waterways more than a thousand times, including many of the streams, rivers, and wetlands in the Chesapeake Bay watershed that Chesapeake Bay Foundation works to protect.

Chesapeake Climate Action Network is a 501(c)(3) nonprofit organization dedicated to building and mobilizing a movement to fight global warming and calling for state, national, and international policies to work towards climate stability. The ACP would transport significant quantities of fracked gas from West Virginia to Virginia and North Carolina, fueling toxic fracking, leaking heat-trapping methane, and harming communities and the climate every step of the way.

Cowpasture River Preservation Association is a 501(c)(3) nonprofit organization dedicated to preserving the natural condition and beauty of the Cowpasture River and its tributaries for present and future generations. The ACP would cross the Cowpasture River as well as tributaries to the river. Cowpasture River Preservation Association was formed in the 1970s because of the impending threat posed to the river by corporate development projects like the ACP. The ACP would have a negative impact on the Cowpasture River's water quality and aquatic habitats, which Cowpasture River Preservation Association members and volunteers work to protect.

Friends of Buckingham is a Virginia corporation dedicated to protecting the natural resources and cultural heritage of Buckingham County, Virginia, and to promoting sustainable social and economic well-being. To that end, Friends of Buckingham opposes

projects that extract benefit from our natural resources without directly benefiting the residents and works to promote clean energy, sustainable development, and jobs in Buckingham County. The ACP's proposed compressor station in Buckingham County would contribute to noise, air, and water pollution that would degrade the present quality of life and health of the Union Hill community in Buckingham County as well as the natural environment. Construction and operation of the ACP and the compressor station directly conflict with Friends of Buckingham's mission to protect our health and environment from outside interests like the ACP.

Friends of Nelson is incorporated and under the umbrella of Virginia Organizing, a 501(c)(3) organization, and is dedicated to protecting property rights, property values, rural heritage, and the environment for all the citizens of Nelson County, Virginia. The ACP threatens the rural heritage, steep slopes, and pristine waters in Nelson County that Friends of Nelson and its members cherish and seek to protect.

Highlanders for Responsible Development is a 501(c)(3) nonprofit organization dedicated to the preservation and responsible use of the natural environment of Highland County, Virginia, and the surrounding area of the Allegheny Highlands. Construction of the ACP through Highland County and neighboring areas would result in damage to intact forests and public lands and increased risk of landslides along the steep, mountainous terrain. The ACP would also degrade pristine rivers and streams in the area by increasing sedimentation that threatens to harm iconic species such as brook trout.

Piedmont Environmental Council is a 501(c)(3) nonprofit organization dedicated to promoting and protecting the Virginia Piedmont's rural economy, natural resources, history, and beauty. The ACP threatens to degrade many of the resources Piedmont Environmental

Council works to protect, including public lands, intact working farmland, forestland, and 10 Virginia Outdoors Foundation conservation easements. It also poses a risk to public and private water supplies in a karst landscape in the region.

Shenandoah Valley Battlefields Foundation is a 501(c)(3) nonprofit organization dedicated to preserving the hallowed grounds of the Valley's Civil War battlefields, sharing its Civil War story with the nation, and encouraging tourism and travel to the Valley's Civil War sites. If built, the ACP would cross McDowell Battlefield and the Staunton-Parkersburg Turnpike. Construction would detract from the overall undisturbed and undeveloped character of McDowell Battlefield and would harm the national forestlands surrounding the battlefield, which are crucial to the unspoiled quality of the area.

Sierra Club is a nonprofit organization dedicated to the protection and enjoyment of the environment. The ACP would increase dependence on fracked gas and degrade water quality through increased sedimentation. Pipeline construction would negatively impact threatened and endangered species along the route and would fragment national forestlands and cross the federally protected Blue Ridge Parkway and Appalachian Trail. The ACP also threatens to disproportionately impact communities of color, indigenous communities, and low-income communities along its path. The significant harm the ACP would cause to the natural and human environment is in direct conflict with Sierra Club's mission.

Sound Rivers, Inc. is a 501(c)(3) nonprofit organization dedicated to protecting the health and natural beauty of the Neuse and Tar-Pamlico River Basins in order to provide clean water to the surrounding communities for consumption, recreation, nature preservation, and agricultural use. The ACP would have a negative impact on water quality and aquatic habitats in North Carolina that Sound Rivers members and volunteers seek to protect. The

portions of the Tar and Neuse River watersheds directly impacted by the pipeline are home to many rare species that Sounds Rivers works to protect.

Virginia Wilderness Committee is a 501(c)(3) nonprofit organization dedicated to permanently protecting the best of Virginia's wild places for future generations, fostering understanding and appreciation for Wilderness, and promoting enjoyment and stewardship of our last remaining wildlands. The ACP would have a negative impact on the Blue Ridge Parkway and George Washington National Forest, which Virginia Wilderness Committee works to protect. Within the George Washington National Forest, the pipeline would harm old-growth trees and the endangered Indiana bat, and could harm future opportunities for Wilderness designation.

Wild Virginia is a 501(c)(3) nonprofit organization working to preserve and support the complexity, diversity, and stability of natural ecosystems by enhancing connectivity, water quality, and climate in the forests, mountains, and waters of Virginia. The ACP threatens rare species in its path, would destroy habitat and public lands, would allow for the invasion of non-native invasive species and disease, and would degrade water quality and scenic value in Virginia.

Winyah Rivers Foundation is a 501(c)(3) nonprofit organization dedicated to protecting, preserving, monitoring, and revitalizing the health of the lands and waters of the greater Winyah Bay watershed. One of the rivers in the Winyah Bay watershed that Winyah Rivers Foundation seeks to protect is the Lumber River. The ACP would cross important streams and wetlands in the Lumber River watershed, harming water quality, aquatic habitat, and the natural connections between wetlands, tributaries, and the river, as well as between

groundwater and surface water. The ACP would also harm communities' ability to enjoy and use the waterways in the Lumber River watershed.

B. Landowner Intervenors

Richard Averitt and Richard G. Averitt III purchased a 100-acre parcel of land in Nelson County, Virginia, in 2013, and created Rockfish Valley Investments, LLC in 2013 to develop the parcel into a world-class boutique resort, market, and event venue. The ACP would cut directly across this 100-acre parcel.

Rockfish Valley Investments is a limited liability company, created by the Averitt family, focused on property investment. Rockfish Valley Investments was developing a resort on property in Nelson County, Virginia, when the ACP was proposed. The ACP would cut directly through the center of the 100-acre parcel that Rockfish Valley Investments was in the process of developing into the Spruce Creek Resort and Market.

III. COMMENTS IN OPPOSITION TO REQUEST

With a projected cost of \$8 billion and a path that traverses federally protected lands, steep landslide-prone mountains, and environmental justice communities, the ACP would be one of the nation's most expensive gas pipelines⁴—and one of its most destructive. A poorly designed route and rushed permitting processes have led to the vacatur or withdrawal of eight different permits for the pipeline,⁵ and construction has been halted since December 2018,

⁴ See Scott DiSavino, *Dominion Confirms \$8bln Atlantic Coast Natgas Pipe Cost, Early 2022 In Service*, Reuters (May 5, 2020), <https://reut.rs/2M3cmpE>.

⁵ See Letter from Angela M. Woodard, DETI, to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Nov. 21, 2018) (eLibrary No. 20181121-5094) (**Exhibit 1**) ("Nov. 2018 Woodard Letter") (notifying Commission that U.S. Army Corps of Engineers' Norfolk, Pittsburgh, and Wilmington Districts have suspended ACP's Nationwide Permit 12 verifications); *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150 (4th Cir. 2018) (vacating U.S. Forest Service Special Use Permit and Record of Decision), *rev'd in part*, Nos. 18-1584 et al., 2020 WL 3146692 (U.S. June 15, 2020); Order, *Sierra Club v. U.S. Dep't of the Interior*,

when the United States Court of Appeals for the Fourth Circuit stayed the project's Biological Opinion.⁶ Nearly three years after the Commission conditionally authorized the ACP, less than 6% of the 604-mile pipeline has been completed.⁷ In January 2020, Virginia—the site of over half of the ACP's proposed route—told the Supreme Court that in light of the mounting evidence that the pipeline is not needed, the ACP threatens Virginia's natural resources without clear corresponding benefits.⁸

Conservation and Landowner Intervenor have petitioned for review of the Commission's arbitrary determination of market need for the ACP and the inadequate environmental analysis the Commission performed before issuing the Certificate Order. Those issues, among others, are the subject of ongoing proceedings in the United States Court of Appeals for the District of Columbia Circuit,⁹ and Conservation and Landowner Intervenor do not re-litigate them here.

Separate and apart from the issues with the Commission's original approval of the ACP, however, the Commission cannot grant the requested extension due to developments

No. 18-2095 (4th Cir. Jan. 23, 2019), ECF No. 51 (granting National Park Service's request to vacate and remand Construction and Right-of-Way permits); Order, *Sierra Club v. U.S. Army Corps of Eng'rs*, No. 18-1743 (4th Cir. Jan. 25, 2019), ECF No. 67 (granting U.S. Army Corps of Engineers Huntington District's request to vacate and remand Nationwide Permit 12 verification); *Defs. of Wildlife v. U.S. Dep't of the Interior*, 931 F.3d 339 (4th Cir. 2019) (vacating U.S. Fish and Wildlife Service's second Biological Opinion and Incidental Take Statement); *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68 (4th Cir. 2020) (vacating Clean Air Act permit for Buckingham Compressor Station).

⁶ See Letter from Matthew R. Bley, DETI, to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Dec. 11, 2018) (eLibrary No. 20181211-5109) (**Exhibit 2**).

⁷ Harry Weber, *Dominion Confident It Will Win Atlantic Coast Pipeline Legal Challenges*, S&P Global Platts (June 11, 2019), <https://bit.ly/2kJr5Md>.

⁸ See Br. Amicus Curiae of Virginia in Supp. of Resp'ts 4–9, *U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, No. 18-1584 (U.S. Jan. 22, 2020), <https://bit.ly/3gzK8Rl> (“Virginia Amicus Br.”).

⁹ *Atl. Coast Pipeline, LLC v. FERC*, Nos. 18-1224 et al. (D.C. Cir.).

that have occurred *since* the issuance of the Certificate Order.¹⁰ The Commission’s duty under the Natural Gas Act to ensure that a proposed pipeline project is needed and will serve the public interest¹¹ does not end with its initial approval of the project. The Commission’s certificate deadlines for completing construction and placing pipelines into service “are an important tool for the Commission to use in ensuring that an interstate natural gas pipeline is developed in a manner that is consistent with the public interest.”¹² These deadlines help ensure that the Commission’s public interest determination is not “compromised by significant changes occurring between issuance of the certificate and commencement of the project.”¹³ Where projects are long-delayed, developers must seek extensions of their certificate deadlines, requiring the Commission to assess whether its public interest determination remains valid.¹⁴

The Commission applies a two-part test in weighing extension requests. First, it considers whether the applicant has demonstrated good cause for extending the deadline.¹⁵

¹⁰ See *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at ¶ 9 (2020) (Glick, Comm’r, dissenting) (“[A]lthough ... extension requests should not be a forum to re-litigate the underlying certificate, parties must have the right to argue that developments since the issuance of the certificate have called into question the Commission’s finding of public convenience and necessity.”).

¹¹ *Fed. Power Comm’n v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 7 (1961) (“The Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted.”)

¹² *Algonquin*, 170 FERC ¶ 61,144, at ¶ 3 (Glick, Comm’r, dissenting).

¹³ *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at ¶ 9 (2018); see also 18 C.F.R. § 157.20(b).

¹⁴ See *Iroquois Gas Transmission Sys., L.P.*, 104 FERC ¶ 61,307, at ¶ 14 (2003) (explaining that construction deadlines are necessary to “ensure that the facts, analysis, and rationale regarding a particular proposal do not grow stale.”).

¹⁵ *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at ¶ 9.

Second, it evaluates whether its original public interest determination has been compromised by significant changes occurring since issuance of the certificate—because new information undermines its finding that the project is required by the public convenience and necessity, or because changes to the project or “significant new circumstances or information relevant to environmental concerns” undermine its determination that the project is an environmentally acceptable action.¹⁶

Here, the Commission cannot grant Atlantic’s requested extension for four reasons. First, no good cause exists for the extension where Atlantic’s permitting delays were both foreseeable and avoidable. Second, dramatic shifts in the region’s energy landscape and substantial new information bearing on the ACP’s environmental impacts have undermined the Commission’s three-year-old findings that the ACP is required by the public convenience and necessity and is an environmentally acceptable action. Third, an extension of the construction deadline requires additional state certifications under Section 401 of the Clean Water Act. And fourth, without credible prospects for completion of the ACP, the Commission cannot allow continued restrictions on landowners’ use and development of their property. For these reasons, the Commission must deny the extension request.

A. No Good Cause Exists to Grant the Requested Extension Where Atlantic’s Permitting Delays Were Both Foreseeable and Avoidable.

Construction deadlines may be extended only for good cause.¹⁷ The project proponent “bears a heavy burden of showing good cause as to why it should not be held to” its original deadline.¹⁸ To that end, the proponent must demonstrate “that it made good faith

¹⁶ *Id.* at ¶¶ 16–17.

¹⁷ *See* 18 C.F.R. § 385.2008(a); *see also* *Algonquin*, 170 FERC ¶ 61,144, at ¶ 32.

¹⁸ *Gary & Catherine Wright*, 37 FERC ¶ 62,165, 63,171 (1986).

efforts to meet its deadline but encountered *unforeseeable* circumstances.”¹⁹ Then the Commission, “[i]n order to properly evaluate an assertion of ‘good cause[,]’” will “review carefully the facts surrounding each formal request.”²⁰

Whether good cause exists here turns on whether the ACP’s delay has resulted from unforeseeable circumstances or from Atlantic’s own discretionary action.²¹ The record before the Commission demonstrates the latter. Atlantic claims that it “encountered unforeseeable circumstances” that resulted

from decisions of the United States Court of Appeals for the Fourth Circuit related to [its] U.S. Forest Service Record of Decision and Special Use Permit, . . . its U.S. Fish and Wildlife Service Biological Opinion and Incidental Take Statement, and the air permit for the compressor station in Buckingham, Virginia.”²²

The circumstances at the heart of these cases were anything but unforeseen. Atlantic pursued a route that failed to meet relevant permitting agency standards and, most damaging to its request, pursued that route even after being notified repeatedly by those agencies and the public about significant issues. After ignoring numerous warnings, Atlantic is now before the Commission claiming ignorance and asking the Commission to forgive the delay that predictably ensued.

¹⁹ *Algonquin*, 170 FERC ¶ 61,144, at ¶ 32 (emphasis added); *see also Arlington Storage Co.*, 155 FERC ¶ 61,165, at ¶ 8 (2016).

²⁰ *Gary & Catherine Wright*, 37 FERC ¶ 62,165, 63,171.

²¹ *Compare* Letter from Richard W. Foley, FERC, to Sean P. Jamieson, Spire STL Pipeline, LLC, Dkt. No. CP 17-40 (June 18, 2020) (eLibrary No. 20200618-3095) (**Exhibit 3**) (granting extension request in light of construction delays resulting from COVID-19 pandemic), *with Gary & Catherine Wright*, 37 FERC ¶ 62,165, 63,171–72 (“mere discretionary” action and circumstances “not beyond the control” of the project proponent insufficient to show good cause) (citing *Van Buren Twp.*, 27 FERC ¶ 61,361 (1984)).

²² Extension Request at 2.

1. The Forest Service raised issues with Atlantic’s proposed route beginning in 2015 and throughout the permitting process.

The Forest Service identified issues with Atlantic’s route early on. In each instance, Atlantic refused to address the Forest Service’s concerns unless required to. For example, in April 2015 the Forest Service raised concerns regarding one section of the route in the Monongahela National Forest—Cheat Mountain²³—and one section in the George Washington National Forest—Shenandoah Mountain.²⁴ The Forest Service stated that “any route across Cheat/Back Allegheny Mountain is likely to have substantial impacts relative to other route and system alternatives,”²⁵ including impacts to the critical habitat of the endangered Cheat Mountain salamander.²⁶ Similarly, the Forest Service explained that “[n]early the entire known range of the Cow Knob salamander ... occurs ... along the crest of Shenandoah Mountain and Great North Mountain”²⁷ and advised Atlantic to “avoid areas where the Cow Knob Salamanders occur.”²⁸ Over the course of several months, the Forest Service continued to reiterate these concerns.²⁹ Nevertheless, when Atlantic applied for its

²³ See U.S. Forest Serv., Scoping Comments at 3, Dkt. No. PF15-6 (Apr. 27, 2015) (eLibrary No. 20150428-5052) (**Exhibit 4**) (“Forest Service Scoping Comments”) (“A pipeline across the top of the Cheat Mountain-Back Allegheny massif would be inconsistent with” aspects of the Forest Service Management Plan.).

²⁴ See U.S. Forest Serv., Comments on Draft Resource Reports at 18, Dkt. No. PF15-6 (July 30, 2015) (eLibrary No. 20150730-5223) (**Exhibit 5**) (“Forest Service Draft Resource Reports Comments”) (“Develop alternatives that avoid impacts to the salamander such as 1) completely avoiding Cow Knob salamander habitat and 2) using horizontal directional drill to reduce direct take and habitat loss.”).

²⁵ Forest Service Scoping Comments at 2.

²⁶ See *id.* at 14 (expressing concerns over impacts to Cheat Mountain salamander habitat).

²⁷ Forest Service Draft Resource Reports Comments at 18.

²⁸ Forest Service Scoping Comments at 14.

²⁹ See Letter from H. Thomas Speaks Jr., U.S. Forest Serv., to Kimberly D. Bose, FERC, 1, Dkt. No. PF15-6 (Sept. 17, 2015) (eLibrary No. 20150917-5134) (**Exhibit 6**) (“Herein, we reiterate our previous comments and document additional information to substantiate our

special use permit in November 2015, it had failed to address any of these issues. On that basis, the Forest Service required Atlantic to reroute the pipeline and “avoid the Cheat Mountain and Cow Knob salamanders and their habitats.”³⁰

After its initial route was rejected, Atlantic proposed a reroute that avoided both Cheat and Shenandoah Mountains. This route (GWNF6), however, was a hastily developed adjustment “generally just 15 miles South” of the original route³¹—a reroute that only partially addressed the existing issues while also creating new ones. As a result, the Forest Service highlighted the proposed reroute’s impacts on sensitive species,³² erosion on steep slopes,³³ and landslides,³⁴ among others. In its comments on the Commission’s draft environmental impact statement, the Forest Service yet again spelled out its issues with

concerns about the effects of the proposed ACP Project on the Cow Knob and the Cheat Mountain salamanders.”); Letter from H. Thomas Speaks Jr., U.S. Forest Serv., to Kimberly D. Bose, FERC, Dkt. No. CP15-554 (Oct. 13, 2015) (eLibrary No. 20151013-5528) (**Exhibit 7**) (noting the still present need for continued study and evaluation of alternatives and “regarding project effects on salamanders”).

³⁰ Letter from Kathleen Atkinson, U.S. Forest Serv., to Leslie Hartz, ACP, 1, Dkt. No. CP15-554 (Jan. 19, 2016) (eLibrary No. 20160121-5029) (**Exhibit 8**).

³¹ U.S. Forest Serv., Comments on the Draft EIS for Proposed ACP Project 13, Dkt. No. CP15-554 (Apr. 6, 2017) (eLibrary No. 20170406-5532) (**Exhibit 9**) (“Forest Service Draft EIS Comments”).

³² *See, e.g.*, U.S. Forest Serv., Comments on the Preliminary Draft Biological Evaluation 4–6, Dkt. No. CP15-554 (Sept. 30, 2016) (eLibrary No. 20160930-5329) (**Exhibit 10**) (“Please describe how impacts to populations of sensitive plant species will be avoided while still controlling [non-native invasive species].”) (among other statements).

³³ *See* Submittal of Correspondence between Forest Service and ACP, Atlantic Coast Pipeline LLC, Dkt. No. CP15-554 (Mar. 14, 2017) (eLibrary No. 20170313-5332) (**Exhibit 11**) (“As we [the Forest Service] noted ... the information submitted [by Atlantic] on January 10, 2017 still lacked important details regarding specific areas of concern, and the effectiveness information and construction narrative were requested once again.”).

³⁴ *See* Email from Clyde Thompson, U.S. Forest Serv., to Glenn Casamassa, U.S. Forest Serv. (Dec. 20, 2016) (**Exhibit 12**) (“December 2016 Thompson Email”) (Forest Service “not optimistic” about the “reasonable chance of keeping the pipeline on the mountain and ... the mountain on the mountain.”).

GWNF6.³⁵ The Forest Service also noted Atlantic’s continued refusal to consider non-Forest Service alternatives.³⁶ These potentially environmentally advantageous alternatives could have addressed Atlantic’s issues, but Atlantic never evaluated them—likely because, by Atlantic’s own admission, alternatives that crossed the Appalachian National Scenic Trail in areas not under Forest Service management did not fit with Atlantic’s preferred timeline.³⁷

Despite these issues and the repeated concerns conveyed by the Forest Service, Atlantic went ahead with its preferred route and pressured the Forest Service to rush its permitting process.³⁸ It was thus entirely foreseeable that Atlantic’s route would not withstand judicial scrutiny. Indeed, in its decision in *Cowpasture River Preservation*

³⁵ See Forest Service Draft EIS Comments at 16, 38 (“a determination of compliance with applicable Forest Plan direction is still outstanding” and “the [Forest Service] has reservations about the conclusions that have been documented in the D[raft] EIS for biological resources.”).

³⁶ See *id.* at 13 (“No analysis of a National Forest Avoidance Alternative has been conducted, and environmental impacts of this alternative have not been considered or compared to the proposed action.”).

³⁷ See Email from Leslie Hartz, Dominion Transmission, Inc., to Clyde Thompson, U.S. Forest Serv. (Jan. 26, 2016) (**Exhibit 13**) (“We filed a route with FERC ... that minimizes the crossing of Forest Service lands including the Shenandoah Mountain to the maximum extent practicable, given the optimum point for crossing the Appalachian National Scenic Trail.”); see also Forest Service Draft Resource Reports Comments at 45 (noting that Atlantic “should have a more in-depth discussion of the resource related rationale for why [National Park Service] administered Appalachian Trail lands were being avoided and not base all of the routing decisions for the Appalachian National Scenic Trail crossing on project timeline issues with getting Congressional approval. The proposed location for crossing the Appalachian National Scenic Trail need to be based on sound resource and compelling public interest determinations.”).

³⁸ See December 2016 Thompson Email (Forest Service staff noting that Dominion Energy representative was upset that Forest Service indicated final decision date was “to be determined” and felt that non-discretionary regulation timelines “could be/were being negotiated.”); see also Email from Glenn Casamassa, U.S. Forest Serv., to Kathleen Atkinson, U.S. Forest Serv. (Dec. 27, 2016) (**Exhibit 14**) (explaining that the proposed permitting timeline was “unrealistic” but that “Dominion’s intent is to have our Draft ROD published with the [Commission] F[inal] EIS.”).

Association v. Forest Service, the Fourth Circuit called attention to the very issues previously raised by the Forest Service regarding Atlantic’s preferred route, and it did so at length.³⁹

Atlantic’s claim in its extension request that it expects “prompt reissuance of the [Forest] Service’s forest and trail crossing permit ... with no change in the Commission-authorized pipeline route”⁴⁰ demonstrates that Atlantic plans to charge forward without regard for the Fourth Circuit’s holding that the Forest Service *must*, under the National Forest Management Act (“NFMA”), the George Washington and Monongahela National Forest Plans, and the National Environmental Policy Act (“NEPA”), consider alternative routes that avoid the national forests. Given that the Forest Service has yet to issue even a *draft* supplemental environmental impact statement for public comment, it would be presumptuous for Atlantic to have such confidence in a “prompt reissuance” “with no change in the ... route.”⁴¹

2. The Fish and Wildlife Service similarly raised issues with Atlantic’s route from the start of the permitting process.

The Forest Service was not the only agency to express concerns with Atlantic’s proposed route. As early as 2014, the U.S. Fish and Wildlife Service (“FWS”) wrote to Atlantic regarding impacts to the Hackers Creek population of the endangered clubshell, explaining that “[t]he current population for clubshell mussels present in Hackers Creek will likely be adversely affected and could potentially be extirpated by the [project] ... Stressors include an increase in sediment load in the stream due to runoff which would cause excessive sedimentation that may reduce suitable habitat for mussels and can smother them, causing

³⁹ See *Cowpasture*, 911 F.3d at 157–58.

⁴⁰ Extension Request at 3.

⁴¹ *Id.*

death.”⁴² Accordingly, FWS “highly recommend[ed] avoiding or drastically minimizing the number of crossings to Hackers Creek by seeking an alternative route for the pipeline alignment.”⁴³ Atlantic refused and instead pressured FWS to approve Atlantic’s preferred route.⁴⁴ That left FWS trying to determine how it could authorize the ACP without the project jeopardizing the clubshell in violation of the Endangered Species Act (“ESA”).⁴⁵ It should come as no surprise, then, that the Fourth Circuit has now vacated two Biological Opinions for the ACP, including for failure to adequately protect the clubshell.⁴⁶

The survival of the clubshell was not the only concern FWS raised throughout the permitting process. In January and November 2016, FWS noted that Atlantic had failed to provide sufficient data for FWS to finalize its assessment of impacts to endangered and threatened species.⁴⁷ Over a year later, FWS reiterated its concerns, explaining that

⁴² Letter from John Schmidt, FWS, to William Scarpinato, Dominion Energy (Dec. 9, 2014) (**Exhibit 15**).

⁴³ *Id.*

⁴⁴ See Letter from Patrick Hunter, Southern Environmental Law Center (“SELC”), to Paul Phifer, FWS, Dkt. Nos. CP15-554 et al. (Sept. 7, 2018) (eLibrary No. 20180911-5007) (**Exhibit 16**) (explaining political meddling in FWS’s decision-making and attaching relevant documents).

⁴⁵ Email from Liz Stout, FWS, to Robert Anderson, FWS (Oct. 3, 2017) (**Exhibit 17**) (asking internally if there was a case “case for the loss of Hackers Creek pop’n *not* appreciably reducing the likelihood of survival and recovery of the clubshell in the wild”).

⁴⁶ *Sierra Club v. U.S. Dep’t of the Interior*, 899 F.3d 260, 275–76 (4th Cir. 2018); *Defs. of Wildlife*, 931 F.3d at 356–60.

⁴⁷ See Letter from John E. Schmidt, FWS, to Kimberly D. Bose, FERC, 2, Dkt. No. CP15-554 (Jan. 7, 2016) (eLibrary No. 20160107-5228) (**Exhibit 18**) (“As received, these survey results are incomplete”); FWS, FERC & FWS Consultation Meeting, General Comments 2 (Nov. 7, 2016) (**Exhibit 19**) (reiterating that it “will be requiring that all surveys be completed prior to development of the Biological Opinion”).

necessary information was still outstanding.⁴⁸ In the face of these issues, Atlantic pushed forward with the pipeline and never provided FWS with the missing information.⁴⁹ The lack of adequate surveys was another basis for the Fourth Circuit’s vacatur of the two Biological Opinions issued for the project.⁵⁰

3. Atlantic was on notice about the existence of an environmental justice community in Buckingham County, Virginia.

For well over four years, Atlantic also ignored the existence of an environmental justice community near the site of its proposed compressor station in Buckingham County, Virginia. Yet the presence of this community was anything but unknown. Residents of Union Hill are 84% people of color, mostly African-American.⁵¹ Many are also descendants of formerly enslaved people from area plantations who settled the area after the Civil War.⁵² The Commission’s docket contains a wealth of information and concern about Union Hill, its people, and its history submitted by its residents, organizations, and even the Governor’s Advisory Council on Environmental Justice. But even in the face of this information,

⁴⁸ See FWS, Comments on Atlantic Coast and Supply Header Pipeline Project Draft EIS 2-4, Dkt. No. CP15-554 (Mar. 30, 2017) (**Exhibit 20**) (formal consultation could not be initiated because the service lacked sufficient information for multiple species, including surveys).

⁴⁹ One day after ACP developers met with FWS officials, see James Cason official calendar, https://www.doi.gov/sites/doi.gov/files/uploads/cason_april_1_-_28_2017_redacted.pdf (last visited July 1, 2020) (**Exhibit 21**), FWS field staff reviewing the ACP received internal direction “that we can’t require surveys and will not make further requests for surveys that interfere with applicant’s project schedule ... and we will not state that we have insufficient information ... and will not delay initiation of consultation based on lack of baseline/species survey data.” See Email from Glenn Smith, FWS, to Jerry Ziewitz et al., FWS (Apr. 14, 2017) (**Exhibit 22**).

⁵⁰ See *Sierra Club*, 899 F.3d at 272 (noting that FWS argued that it could not set take limits because “it lacked current survey information ... or ACP had not completed the necessary surveys.”); See e.g., *Def. of Wildlife*, 931 F.3d at 349 (finding that FWS relied on assumptions to estimate RPBB populations because it did not have survey data).

⁵¹ *Friends of Buckingham*, 947 F.3d at 86.

⁵² *Id.* at 85–86.

Atlantic steadfastly refused to acknowledge the existence of any environmental justice population in Union Hill or to relocate its compressor station.

In September 2015, Atlantic applied to the Virginia Department of Environmental Quality (“Virginia DEQ”) for an air pollution permit for a proposed compressor station in Buckingham County.⁵³ One month later, anthropologist Lakshmi Fjord intervened in the ACP proceedings and identified the Union Hill community near the site of the proposed station, explaining in part that she was “deeply concerned” about the project’s effects on “Union Hill, where ex-slaves bought land on the plantations on which they were once enslaved, and their ancestors live there today.”⁵⁴ Over the next three years, commenters brought increasingly more details about the Union Hill community and its history to Atlantic’s attention.⁵⁵

⁵³ Letter from Angela M. Woodard, ACP, to Kimberly D. Bose, FERC, 154–281 (air permit application submitted to Virginia DEQ), Dkt. Nos. CP15-554 et al. (Oct. 1, 2015) (eLibrary No. 20151001-5220) (**Exhibit 23**).

⁵⁴ Lakshmi Fjord, Mot. to Intervene, Dkt. No. CP15-554 (Oct. 21, 2015) (eLibrary No. 20151022-5031) (**Exhibit 24**).

⁵⁵ *See, e.g.*, Letter from Sonja Ingram, Pres. Va., to Kimberly D. Bose, FERC, Dkt. No. CP15-554 (May 31, 2016) (eLibrary No. 20160602-5451) (**Exhibit 25**) (noting Union Hill’s value as source of “Reconstruction-era” African-American history); Letter from Paul M. Wilson, Pastor, Union Hill Baptist Church, to Kimberly D. Bose, FERC, Dkt. No. CP15-554 (Apr. 4, 2017) (eLibrary No. 20170405-5078) (**Exhibit 26**) (identifying parishioners of Union Hill and Union Grove churches as descendants of Freedmen and Union Hill community as 85% African-American); Letter from Sonja Ingram, Justin Sarafin, Pres. Va., & Lakshmi Fjord, to John Eddins, Advisory Council on Historic Pres., Dkt. No. CP15-554 (Apr. 6, 2017) (eLibrary No. 20170406-5734) (**Exhibit 27**) (identifying “Laury family, descendants of Buckingham County slaves” as owning 22 properties near proposed compressor station site and Union Hill community as approximately 92% people of color); Shenandoah Valley Network et al., Comments on the Draft EIS 282–93, Dkt. No. CP15-554 (Apr. 6, 2017) (eLibrary No. 20170406-5347) (**Exhibit 28**) (reporting results of volunteer door-to-door survey showing that Union Hill residents are 81% people of color); Letter from Sharee Williamson, Nat’l Trust for Historic Pres., to Nathaniel J. Davis, FERC, Dkt. No. CP15-554 (Apr. 6, 2017) (eLibrary No. 20170406-5288) (**Exhibit 29**) (raising “environmental justice concerns” in connection with compressor station’s impact on historic African-American community in Union Hill); Letter from Emma Ernst, Pres. Piedmont, to

Despite this abundant information, Atlantic pushed its plans for the compressor station forward. As recently as January 2019, Atlantic wrote to state regulators claiming “no environmental justice community is in the vicinity of the Station.”⁵⁶ The State Air Pollution Control Board approved a permit for the facility shortly after Atlantic’s correspondence, and Friends of Buckingham, a group of Union Hill residents and their supporters, and the Chesapeake Bay Foundation filed suit in the Fourth Circuit. At oral argument in October 2019, the Air Board’s counsel acknowledged the predominantly African-American community in Union Hill.⁵⁷ Three months later the court vacated Atlantic’s air pollution permit because, in part, state regulators failed to adequately consider the compressor station’s potential adverse effects on an environmental justice community.⁵⁸ Only after the Fourth Circuit’s decision—well over four years after Atlantic’s initial air permit application for the compressor station—did Atlantic concede the existence of an environmental justice community in Union Hill.⁵⁹

Kimberly D. Bose, FERC, Dkt. No. CP15-554 (Apr. 5, 2017) (eLibrary No. 20170406-5086) (**Exhibit 30**) (identifying majority of Union Hill residents as “descendants of formerly enslaved people” and requesting that FERC and Atlantic relocate proposed compressor station); Governor’s Advisory Council on Env’tl. Justice, Memo to Governor Northam, Dkt. No. CP15-554 (Aug. 16, 2018) (eLibrary No. 20181026-4000) (**Exhibit 31**) (identifying Union Hill as 85% people of color with “ancestry rooted in slavery”); Letter from Rebecca Tomazin, Chesapeake Bay Foundation (“CBF”), to Robert Langford, Va. State Air Pollution Control Bd., et al., Ex. E (Sept. 21, 2018) (**Exhibit 32**) (expert report detailing health risk posed to Union Hill community); Email from Jon Mueller, CBF, to Va. DEQ, Att. D (Jan. 4, 2019) (**Exhibit 33**) (expert declaration detailing health risk posed to Union Hill community).

⁵⁶ Letter from Amanda B. Tornabene, Atlantic Coast Pipeline, to Va. DEQ, 1 (Jan. 2019) (**Exhibit 34**).

⁵⁷ *Friends of Buckingham*, 947 F.3d at 88 n.10.

⁵⁸ *Id.* at 87–92.

⁵⁹ See Letter from Amanda Tornabene, Atlantic Coast Pipeline, LLC, to Michael Dowd, Va. DEQ (Apr. 30, 2020) (**Exhibit 35**) (“April 2020 Tornabene Letter”) (“The analysis shows that an Environmental Justice community exists to the north and east of the facility along

4. The issues at the heart of the ACP’s delay were all within Atlantic’s control.

Atlantic asserts that the litigation currently delaying its outstanding permits was unforeseen.⁶⁰ But Atlantic was aware of the issues at the core of its delay as early as 2014, and was repeatedly reminded that those issues remained unaddressed—well before the initiation of any litigation. Litigation ensued because of Atlantic’s own “discretionary action”⁶¹—namely, its choice of route and its decision not to heed the concerns of expert agencies. Far from “tactical choices on how to satisfy the Certificate Order’s prerequisites for construction,”⁶² Atlantic’s conduct demonstrates bad faith and has resulted in delays of Atlantic’s own making. Accordingly, Atlantic has failed to establish good cause for an extension.

B. Significant Developments Since the Issuance of the Certificate Order Have Eroded the Commission’s Findings That the ACP Is Required by the Public Convenience and Necessity and Is an Environmentally Acceptable Action.

In weighing Atlantic’s extension request, the Commission must evaluate whether its original public interest determination has been compromised by significant changes occurring since issuance of the certificate—because new information undermines its finding that the project is required by the public convenience and necessity, or because changes to the project or “significant new circumstances or information relevant to environmental concerns” undermine its determination that the project is an environmentally acceptable

Union Hill Road, the northern and eastern section Shelton Store Roads, and to the southeast of the facility.”).

⁶⁰ See Extension Request at 2.

⁶¹ See *Gary & Catherine Wright*, 37 FERC ¶ 62,165, 63,171.

⁶² *PennEast Pipeline Co.*, 170 FERC ¶ 61,138, at ¶ 10 (2020).

action.⁶³ Here, both factors compel denial of the extension request. The rapidly changing energy landscape and substantial new information bearing on the ACP's environmental impacts have made the Commission's three-year-old public interest determination obsolete.

1. Dramatic shifts in the region's energy landscape have rendered the Commission's need determination stale.

In its extension request, Atlantic observes that the Commission has historically granted extensions on the assumption that its certificate orders' economic findings will not become stale within a six-year period.⁶⁴ But in no case of which Conservation and Landowner Intervenor are aware has the energy landscape changed as rapidly and dramatically as it has in the ACP's service region since the Certificate Order was issued. Even assuming that some need for the ACP existed in 2017—a dubious assumption, as Conservation and Landowner Intervenor have explained⁶⁵—Virginia and North Carolina's recent adoption of policies requiring a transition from gas-fired electricity generation towards renewable energy upends the Commission's original finding of market need.

The Commission's Environmental Impact Statement identified the ACP's stated purpose as:

- to serve the growing energy needs of multiple public utilities and local distribution companies in Virginia and North Carolina by using the natural gas to generate electricity for industrial, commercial, and residential uses;
- to provide natural gas for direct residential, commercial, and industrial uses;
- to increase the reliability and security of natural gas supplies in Virginia and North Carolina; and
- to provide access to a low cost supply hub with a large volume of transactions

⁶³ *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at ¶¶ 16, 17.

⁶⁴ Extension Request at 2 (citing, *inter alia*, *Constitution Pipeline Co.*, 169 FERC ¶ 61,102, at ¶ 19 (2019)).

⁶⁵ See Final Joint Opening Br. of Conservation Pet'rs & Landowner Pet'rs 11–20, *Atl. Coast Pipeline, LLC*, Nos. 18-1224 et al. (D.C. Cir. July 24, 2019).

characterized by multiple buyers and sellers.⁶⁶

According to the EIS, Atlantic anticipated that nearly 80% of the gas transported by the ACP would be used as fuel at power plants to meet growing energy demand.⁶⁷ To the extent that the demand for energy in Virginia and North Carolina was “growing” in 2017,⁶⁸ that is no longer the case in 2020.⁶⁹ The U.S. Energy Information Administration recently projected that demand for natural gas for electricity generation in the South Atlantic region will decline from 2021 to 2030 and will not return to 2021 levels until the late 2040s.⁷⁰ Consistent with this projection, the ACP’s developers, Dominion Energy and Duke Energy, have revised downward the demand forecasts that informed the Commission’s 2017 analysis, a trend that will only accelerate in light of Virginia and North Carolina’s new clean energy policies. Moreover, the exorbitant cost of the ACP means that, if built, it will not deliver the customer savings Atlantic claimed was a primary benefit of the project.⁷¹ These significant new circumstances undermine the Commission’s original public convenience and necessity finding.

⁶⁶ FERC, Final Envtl. Impact Statement 1-2, Dkt. Nos. CP15-554 et al. (July 2017) (eLibrary No. 20170721-4000) (“EIS”); *see also id.* at 3-2 (stating purpose as providing transportation of 1.44 billion cubic feet per day (“Bcf/d”) of natural gas to consuming markets).

⁶⁷ *Id.* at 1-3.

⁶⁸ *Id.* at 1-2.

⁶⁹ *See Virginia Amicus Br.* at 2 (arguing that “claims the [ACP] is necessary to address an unmet and growing demand for natural gas in Virginia and North Carolina ... do[es] not withstand scrutiny”).

⁷⁰ U.S. Energy Info. Admin., *Annual Energy Outlook 2020*, <https://bit.ly/3etFd2p> (last visited July 1, 2020) (**Exhibit 36**). The South Atlantic region includes Virginia and North Carolina, the ACP’s proposed service area.

⁷¹ Direct Testimony of Gregory M. Lander 3, 18–38, *In re Va. Elec. & Power Co.’s Integrated Resource Plan filing*, Case No. PUR-2018-00065 (Va. SCC Aug. 10, 2018), <https://bit.ly/3ipFqGT> (**Exhibit 37**).

- a. *With no new gas-fired power plants on the horizon and sufficient pipeline capacity to meet the generation demands of existing plants, any purported need for the ACP in Virginia has evaporated.*

In its 2015 application to the Commission, Atlantic claimed that the regulated utility subsidiary of Dominion Energy, Virginia Electric and Power Company d/b/a/ Dominion Energy Virginia (“Dominion”), would use its contracted ACP capacity to support Virginia’s growing demand for electricity generation at new gas-fired power plants and at its existing gas-fired plants.⁷² To the extent the Commission relied on Atlantic’s assertion of a “growing need for natural gas” in Virginia,⁷³ that original assertion has been further undermined since the issuance of the Certificate Order. In August 2018, the Virginia State Corporation Commission, in rejecting Dominion’s 2018 integrated resource plan (“IRP”) filing as not reasonable or in the public interest, found that the utility’s load forecasts “have been consistently overstated ... with high growth expectations despite generally flat actual results each year”⁷⁴ The basis for the state commission’s finding was the stark divergence between Dominion’s year-after-year demand forecasts and actual demand, a disconnect that continued to affect the utility’s forecast in 2019, and is likely to continue in 2020.⁷⁵

⁷² Atlantic Coast Pipeline Project Appl. at 5-7, Dkt. No. CP15-554-000 (Sept. 18, 2015) (eLibrary No. 20150918-5212) (**Exhibit 38**).

⁷³ Certificate Order ¶ 50.

⁷⁴ *In re Va. Elec. & Power Co.’s Integrated Res. Plan filing*, Case No. PUR-2018-00065, 2018 WL 6524202, at *5 (Va. SCC Dec. 7, 2018).

⁷⁵ SELC, Dominion’s Electricity Peak Load Forecasts vs. Actual Peak Loads (July 1, 2020) (**Exhibit 39**); Direct Testimony of James F. Wilson at 4, *Va. Elec. & Power Co.’s Integrated Res. Plan filing* (“2018 IRP Proceeding”), Case No. PUR-2018-00065 (Va. SCC Aug. 10, 2018), <https://bit.ly/2NNF3aK> (**Exhibit 40**); Integrated Resource Plan App. 4G, *In re: Va. Elec. & Power Co.’s Integrated Res. Plan filing*, Case No. PUR-2020-00035 (Va. SCC May 1, 2020), <https://bit.ly/2NJhMab> (**Exhibit 41**) (“2020 IRP”); Synapse Energy Economics, *Obsolete Atlantic Coast Pipeline Has Nothing to Deliver* 3–6 (2020) (**Exhibit 42**) (“Synapse Report”).

Even aside from this new finding casting doubt on its original demand projections, Dominion’s plans for gas-fired power generation have shrunk dramatically since the Commission approved the ACP due to Virginia’s recent passage of landmark energy legislation. In March 2020, the Virginia General Assembly passed a comprehensive package of clean energy and climate bills—the Clean Energy and Community Flood Preparedness Act and the Virginia Clean Economy Act (“VCEA”)—which will eliminate carbon emissions from Virginia’s power sector by 2050. The Clean Energy and Community Flood Preparedness Act enshrines Virginia’s carbon emission reduction regulations in law, requiring Virginia electricity generators to reduce emissions by 30% by 2030⁷⁶, and also authorizes Virginia DEQ to join the Regional Greenhouse Gas Initiative.⁷⁷ The VCEA builds upon this and requires that “[b]y December 31, 2045, [Dominion] shall retire *all* other electric generating units located in the Commonwealth that emit carbon as a by-product of combusting fuel to generate electricity.”⁷⁸

In light of Virginia’s shift to carbon-free generation, Dominion has told regulators that the “significant build-out of natural gas generation facilities is not currently viable, with the passage by the General Assembly of the Virginia Clean Economy Act of 2020”⁷⁹ Dominion’s latest IRP, filed in May 2020, does not contain a single scenario in which Dominion constructs a new combined-cycle generating unit, the type of generating unit the

⁷⁶ 9 Va. Admin. Code § 5-140-6190.

⁷⁷ 2020 Va. Acts ch. 1219 and ch. 1280, codified at Va. Code §§ 10.1-1329 to 101.1-1331.

⁷⁸ 2020 Va. Acts ch. 1193 and ch. 1194, codified at Va. Code. § 56-585.5(B)(3) (emphasis added).

⁷⁹ Va. Elec. & Power Co.’s Mot. for Relief from Certain Requirements ¶ 9, *In re Va. Elec. & Power Co.’s Integrated Res. Plan filing*, Case No. PUR-2020-00035 (Va. SCC Mar. 24, 2020), <https://bit.ly/2zDYxeD> (**Exhibit 43**) (“Dominion Motion for Relief”).

ACP would purportedly serve.⁸⁰ Each scenario in the plan does include a small amount—a mere 970 megawatts (“MW”)—of combustion turbine generation, but only as placeholder for some yet-to-be-determined resource.⁸¹ Dominion acknowledges that it would not use the ACP to serve combustion turbine generation.⁸²

A comparison between Dominion’s 2020 IRP and its IRPs from the years in which the ACP was announced (2015) and approved (2017) underscores the utility’s pronounced shift away from gas-fired generation. Dominion’s 2015 IRP included four alternative scenarios, each of which projected construction of between 4,538 MW and 6,123 MW new combined-cycle gas-fired generation.⁸³ Dominion’s 2017 IRP again depended heavily on new gas generation, ranging from 2,965 MW to 3,664 MW of new capacity depending on the scenario.⁸⁴ Many parties, including some of the Conservation Intervenors, disputed the accuracy of Dominion’s energy demand forecasts, but in 2015 and 2017 the utility

⁸⁰ 2020 IRP 28–29.

⁸¹ *Id.* at 5.

⁸² *Id.* at 75; Report of Staff Witness Bernadette Johnson at 44, *Va. Elec. & Power Co. - To revise its fuel factor pursuant to Va. Code § 56-249.6 (“2020 Fuel Factor Proceeding”)*, Case No PUR-2020-00031 (Va. SCC May 27, 2020), <https://bit.ly/2AlBqpD> (**Exhibit 44**) (“The ongoing cost of firm transportation to accommodate the rare absolute maximum day would likely be higher than procuring in the daily market.”).

⁸³ Integrated Res. Plan 9–10, *In re: Va. Elec. & Power Co.’s Integrated Res. Plan filing*, Case No. PUE-2015-00035 (Va. SCC July 1, 2015), <https://bit.ly/3dO6ITO> (“2015 IRP”) (**Exhibit 45**). Dominion eventually built two of the combined-cycle plants that it included in its 2015 IRP, the Brunswick County Power Station (1,368 MW) and the Greenville County Power Station (1,585 MW), but neither depends on the ACP for fuel supply. For example, the Greenville power plant primarily depends on firm capacity on Transco as well as an asset management agreement with Seneca Resources. *See Appl.* at 7–8, *Va. Elec. & Power Co. - For approval/certification of proposed Greenville Co. Power Station*, Case No. PUE-2015-00075 (Va. SCC July 1, 2015), <https://bit.ly/3eRTJlg> (**Exhibit 46**).

⁸⁴ Integrated Res. Plan 14-15, *In re: Va. Elec. & Power Co.’s Integrated Res. Plan*, Case No. PUR-2017-00051 (Va. SCC May 1, 2017), <https://bit.ly/2BrvHio> (“2017 IRP”) (**Exhibit 47**). Each plan also included the addition of the Greenville combined cycle generating station, but that unit—while not online—had already been approved and was under construction. *Id.*

aggressively pushed its plans for new gas-fired power plants. With the passage of the VCEA, that is no longer the case.

Recent analysis by the energy consulting firm Synapse Energy Economics (“Synapse”) confirms that the VCEA will dramatically shift the profile of Dominion’s generation resources away from gas.⁸⁵ Synapse applied conservative assumptions based on the VCEA and the 2020 IRP to model the maximum peak-day generation scenario that could be experienced by the utility over the next 10 years.⁸⁶ In this unlikely “worst-case” scenario, Synapse concluded that Dominion would experience only a minimal amount of increased gas consumption—0.014 Bcf/d, an amount equivalent to a mere 0.9% of the ACP’s total capacity—from the two “placeholder” combustion turbines identified in the 2020 IRP.⁸⁷ This potential increased consumption would occur between the years 2024 to 2028; after 2028, the model showed that consumption declined for the new plants.⁸⁸

Now that the VCEA has forced Dominion to abandon its gas build-out plans, the utility’s only generating units that could use the ACP are those already in existence. Those existing units, however, do not need the ACP to operate now or in the future. In each of the past three years, the Virginia State Corporation Commission has found that Dominion’s existing pipeline capacity portfolio is adequate for its existing generation fleet.⁸⁹ Analysis

⁸⁵ Synapse Report at 13–15.

⁸⁶ *Id.* at 17–19

⁸⁷ *Id.* at 18–19. As noted above, Dominion does not fuel combustion turbines with firm pipeline capacity like the ACP would provide, and according to the IRP itself, new technology may make the plan for these plants obsolete. *See* 2020 IRP 75; Report of Staff Witness Bernadette Johnson at 50, *2020 Fuel Factor Proceeding*.

⁸⁸ Synapse Report at 18–19.

⁸⁹ Order Establishing 2018-2019 Fuel Factor at 3 n.8, *Va. Elec. & Power Co.- To revise its fuel factor pursuant to Va. Code § 56-249.6 (“2018 Fuel Factor Proceeding”)*, Case No. PUR-2018-00067, 2018 WL 4144009 (Va. SCC Aug. 27, 2018) (“we find that at the current

from SkippingStone, a global energy firm, confirmed Virginia regulators' conclusions, finding that the utility's existing pipeline capacity is sufficient to meet the peak demands of its combined-cycle power plants with a 7% to 10% reserve margin.⁹⁰ In addition, the Synapse model showed that Dominion's existing plants will run less frequently by 2030,⁹¹ and data provided in the 2020 IRP about one of the plan's scenarios shows that usage rates for Dominion's existing Bear Garden, Brunswick, Greenville, and Warren gas plants would decline significantly by 2030.⁹²

In short, Dominion's existing plants do not need the ACP now or in the future, and Dominion has no plans to build new plants that might need it.

- b. Demand for natural gas for power generation has also declined in North Carolina, a trend that will continue under the state's new Clean Energy Plan.*

Like Dominion, Duke Energy has consistently inflated forecasted load growth. Moreover, its prior plans for significant build-out of gas-fired electric generation are inconsistent with both North Carolina's newly proposed energy policy and Duke Energy's own corporate carbon reduction targets.

time: the overall deliverability of Dominion's portfolio is reasonably sized for the size of its generation fleet"); Order Establishing 2019-2020 Fuel Factor 3 n.8, *Va. Elec. & Power Co. - To revise its fuel factor pursuant to VA Code section 56-249.6* ("2019 Fuel Factor Proceeding"), Case No. PUR-2019-00070, 2019 WL 3858616 (Va. SCC Aug. 15, 2019) (same); Order Establishing 2019-2020 Fuel Factor 4 n.8, *Va. Elec. & Power Co. - To revise its fuel factor pursuant to Va. Code § 56-249.6* ("2020 Fuel Factor Proceeding"), Case No. PUR-2020-00031 (Va. SCC Aug. 27, 2018), <https://bit.ly/3dQ4enK> (same).

⁹⁰ SkippingStone, Analysis of the Sufficiency of Dominion Energy Virginia's Existing Pipeline Contracts to Meet Gas-Fired Generation Demand 1 (2020) (**Exhibit 48**).

⁹¹ Synapse Report at 18–19 ("all gas generation in Dominion's service territory falls in the last three years of the analysis period.").

⁹² 2020 IRP, App. 5D, Schedule 9.

In a 2017 Order approving Duke Energy’s 2016 IRPs, the North Carolina Utilities Commission (“NCUC”) shared concerns raised by the Public Staff about Duke Energy’s load forecasting methods and agreed that Duke Energy’s forecasts “may be higher than reasonably justified.”⁹³ Indeed, Duke Energy Carolinas’ forecasts for the most recent three years—2017, 2018, and 2019—sit well below the forecasts for 2012, 2014, 2015, and 2016.⁹⁴ And both Duke Energy Progress and Duke Energy Carolinas have consistently lowered the starting point of their load forecasts each year.⁹⁵ Duke Energy’s most recent estimate of energy needed in 2025 is 13% lower than its estimate from 2012.⁹⁶ Likewise, the summer peak loads for both Duke Energy Carolinas and Duke Energy Progress remain well below what was projected by the utilities.⁹⁷ The 2012 peak summer forecast—the planning horizon that both Duke Energy utilities were operating under when they planned the ACP—was the highest of all. The “2012 forecast for 2027 is more than 4,000 MW higher than the 2019 forecast for that same year.”⁹⁸

⁹³ Order Accepting Integrated Res. Plans, *In re: 2016 Biennial Integrated Res. Plans*, Dkt. No. E-100, SUB 147, 2017 WL 2807696 (NCUC June 27, 2017).

⁹⁴ Synapse Report at 6–7.

⁹⁵ *Id.*

⁹⁶ Compare Duke Energy Carolinas Integrated Res. Plan 27, Dkt. E-100, Sub 137 (NCUC Sept. 1, 2012), <https://bit.ly/2UHkK3b> (**Exhibit 49**), and Progress Energy Integrated Res. Plan 9, Dkt. E-100, Sub 137 (NCUC Sept. 4, 2012), <https://bit.ly/346RqpX> (**Exhibit 50**) (estimating demand for combined 186,300 gigawatt hours of energy in 2025), with Duke Energy Carolinas Integrated Res. Plan Update Report 15, Dkt. E-100, Sub 157 (NCUC Oct. 29, 2019), <https://bit.ly/2yF2bEy> (**Exhibit 51**), and Duke Energy Progress Integrated Res. Plan Update Report 16, Dkt. E-100, Sub 157 (NCUC Oct. 29, 2019), <https://bit.ly/2RbaHRT> (**Exhibit 52**) (estimating demand for 161,904 gigawatt hours of energy in 2025).

⁹⁷ Synapse Report at 7, fig. 3. “Summer peak load” refers to the summer afternoon hour when the highest amount of electricity is consumed across the utility.

⁹⁸ *Id.* at 7.

Although Duke Energy’s most recent demand forecasts remain inflated, Duke Energy’s 2020 IRP should include scenarios in response to North Carolina’s Clean Energy Plan, a recent, significant change to the energy landscape in North Carolina that is incompatible with a major expansion of natural gas electric generation.⁹⁹ The North Carolina Clean Energy Plan, proposed in 2019 by North Carolina’s Department of Environmental Quality, was developed with input from more than 160 stakeholder groups, including Duke Energy.¹⁰⁰ The Plan establishes the goal to reduce emissions from the electric sector by 70% below 2005 levels by 2030 and achieve carbon neutrality by 2050.¹⁰¹ Electric sector modeling performed during the development of the Plan shows that Duke Energy’s 2019 IRP-proposed gas capacity additions are incompatible with the targets set by the Clean Energy Plan.¹⁰² In 2020, Duke Energy set its own corporate-wide carbon reduction goals, which call for a 50% reduction in carbon pollution (relative to 2005 levels) by 2030 and net-zero emissions by 2050.¹⁰³

The NCUC has ordered North Carolina utilities to model pathways for achieving the goals set by Executive Order No. 80 (the impetus for the Clean Energy Plan), but because

⁹⁹ In response to Executive Order 80 (the impetus for the Clean Energy Plan) the NCUC ordered North Carolina utilities to model pathways for achieving the goals set by the Executive Order, but those plans will not be available until September 2020. *See* Order Accepting Integrated Res. Plans, *In re: 2018 Biennial Integrated Res. Plans*, Dkt. No. E-100, Sub 157, 2019 WL 4136246 (NCUC Aug. 27, 2019) (“2018 IRP Order”).

¹⁰⁰ N.C. Dep’t of Env’tl. Quality, Clean Energy Plan 11, 12 (Oct. 2019), <https://bit.ly/3evSnMC> (**Exhibit 53**).

¹⁰¹ *Id.* at 12.

¹⁰² *Id.* at 25, 59.

¹⁰³ Duke Energy, *Achieving a Net Zero Carbon Future* (2020), <https://bit.ly/38hLywd> (**Exhibit 54**). In 2017, Duke Energy announced its goal to reduce carbon emissions 40 percent below 2005 levels by 2030 but revised those goals in 2019, acknowledging the declining costs for renewables and storage).

Duke Energy’s plans will not be available until September 2020,¹⁰⁴ Synapse modeled a plan incorporating the Clean Energy Plan for units in North Carolina and incorporating Duke Energy’s corporate goals for units in South Carolina.¹⁰⁵ Synapse’s modeling showed that the ACP would provide far more capacity, and at a much higher cost, than the utilities could reasonably justify for meeting any incremental needs for new gas capacity. Specially, Synapse concluded that at most, Duke Energy would need gas equivalent to approximately 9% of the ACP’s capacity to supply any new gas-fired electric generation.¹⁰⁶

Put simply, to the extent the ACP’s proposed capacity appeared to serve any need for the state when it was approved, the significant shifts in the policy landscape since 2017 render ACP’s massive new capacity obsolete for North Carolina.

- c. *Newly proposed and recently completed projects further diversify the region’s gas supply.*

In addition to decreasing demand for and build-out of gas-fired electricity generation, there are newly proposed natural gas projects that, if built, would be in the vicinity of the ACP.¹⁰⁷ As proposed, Virginia Natural Gas’s Header Improvement Project would provide over 0.4 Bcf/d to customers in Virginia,¹⁰⁸ while the Southeastern Trail project would supply

¹⁰⁴ 2018 IRP Order.

¹⁰⁵ Synapse Report at 19.

¹⁰⁶ *Id.* at 19–20.

¹⁰⁷ See EIS 3-6 (considering “major natural gas transportation projects proposed in the general vicinity of ACP” in system alternatives analysis). Conservation and Landowner Intervenor do not concede the need for or acceptability of these projects. As a factual matter, they are relevant to the Commission’s review of potential alternatives to the ACP.

¹⁰⁸ See Appl. at 1, *Appl. of Va. Nat. Gas for approval & certification of natural gas facilities: the Header Improvement Project*, Case No. PUR-2019-00207 (Va. SCC Dec. 6, 2019), <https://bit.ly/2XHC9sI> (**Exhibit 55**) (“Header Improvement Project Application”). On June 26, 2020, the state commission delayed a final decision on the Header Improvement Project, requesting additional information from the applicant and imposing additional financial conditions on the project. Preliminary Order, *Appl. of Va. Nat. Gas for approval &*

an additional 0.3 Bcf/d to the Southeast, including Virginia.¹⁰⁹ The MVP Southgate Project would deliver 0.375 Bcf/d of new firm capacity in North Carolina.¹¹⁰ And the Robeson LNG plant in North Carolina would be a one billion-cubic-foot liquefied natural gas peaking and storage facility.¹¹¹ Each of these four projects is proposed to be completed within a timeframe similar to the ACP's, with Southeastern Trail and the Robeson LNG facility projected to be operational before the ACP.¹¹²

These projects are in addition to recently completed projects that have further increased the region's access to low-cost supply hubs well beyond what was available in 2017.¹¹³ Pipeline capacity has increased by 1.65 Bcf/d in Virginia and by 0.57 Bcf/day in North Carolina since 2017.¹¹⁴ Atlantic asserts—without support—that “[t]he markets to be served by the Projects have been chronically constrained in terms of natural gas supply, as interstate natural gas pipeline capacity is either already fully subscribed or nonexistent.”¹¹⁵ But the mere fact that other pipelines are “fully subscribed” does not mean that the ACP's

certification of natural gas facilities: the Header Improvement Project, Case No. PUR-2019-00207, 2020 WL 3577843 (Va. SCC June 26, 2020).

¹⁰⁹ See *Transcontinental Gas Pipe Line Co., LLC*, 169 FERC ¶ 61,051, at ¶¶ 1, 7 (2019).

¹¹⁰ See *Appl. of Mountain Valley Pipeline, LLC* at 2, 9, Dkt. No. CP19-14 (Nov. 6, 2018) (eLibrary No. 20181106-5159) (**Exhibit 56**).

¹¹¹ See *Robeson Liquefied Natural Gas*, Piedmont Nat. Gas, <https://bit.ly/3caQD9J> (last visited July 1, 2020) (**Exhibit 57**).

¹¹² See *Transcontinental*, 169 FERC ¶ 61,051, Ordering Paragraph (A)(1) (setting in-service deadline of October 2021); Piedmont Nat. Gas (estimating summer 2021 completion).

¹¹³ See *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at ¶¶ 1, 11 (2017) (Atlantic Sunrise project adding 1.7 Bcf/d from Marcellus to mid-Atlantic and Southeast markets); *Columbia Gas Transmission, LLC*, 161 FERC ¶ 61,200, at ¶ 9 (2017) (WB Xpress project adding 1.3 Bcf/d from Marcellus to West Virginia and Virginia markets).

¹¹⁴ *Natural Gas Data: Pipelines*, U.S. Energy Info. Admin. (Jan. 22, 2020), <https://www.eia.gov/naturalgas/data.php> (download “U.S. state-to-state capacity” Excel spreadsheet, select “Inflow By State and Pipeline” tab) (**Exhibit 58**).

¹¹⁵ Extension Request at 1.

potential customers cannot use them. Over 90% of the capacity on three of the region’s newest pipeline projects—Atlantic Sunrise, WB Xpress, and the yet-to-be-completed Mountain Valley Pipeline (“MVP”)¹¹⁶—is subscribed not by end users of the gas, but by producers and marketers looking for end users.¹¹⁷ Nor can Atlantic fairly claim that pipeline capacity is “nonexistent”; in August 2018 (nearly a year after the Commission issued the Certificate Order), Atlantic admitted to the Commission that the ACP could readily obtain more than 0.885 Bcf/d of gas—62% of its contracted capacity—from the Transco and Columbia pipeline systems, with significantly less construction than would be required for the full ACP.¹¹⁸ Atlantic has offered no evidence that its ability to obtain capacity on these systems has changed. And in a brief filed before the Public Service Commission of South Carolina, Transco confirmed that the ACP would represent “duplicative infrastructure and

¹¹⁶ The MVP remains subject to many of the same permitting hurdles as the ACP, although the challenge to the Commission’s certificate for the pipeline was rejected in 2019. *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019).

¹¹⁷ See *Transcontinental Gas Pipe Line Co.*, 158 FERC ¶ 61,125, at ¶ 11 & nn.10–19 (1.64 of 1.7 Bcf/d owned by producers and marketers); *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at ¶ 10 & nn.12–16 (2017) (1.74 of 2 Bcf/d owned by producers and marketers); *Columbia Gas Transmission, LLC*, 161 FERC ¶ 61,200, at ¶ 9 (at least 0.5 Bcf/d eastbound capacity); Letter from John A. Roscher, Columbia Gas Transmission, LLC, to Kimberly D. Bose, FERC, App. A, *Columbia Gas Transmission, LLC*, Dkt. No. RP18-1217 (Sept. 25, 2018) (eLibrary No. 20180925-5118) (**Exhibit 59**) (service agreements indicating 0.425 of 0.5 Bcf/d owned by producers and marketers); see also *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at ¶ 304 (2018) (“unknown” where gas from MVP would go and “no identifiable end use” for gas).

¹¹⁸ Letter from Matthew R. Bley, DETI, to Kimberly D. Bose, FERC, 3, Dkt. Nos. CP15-554 et al. (Aug. 13, 2018) (eLibrary No. 20180813-5065) (**Exhibit 60**); Letter from Matthew R. Bley, DETI, to Kimberly D. Bose, FERC, 2, Dkt. Nos. CP15-554 et al. (Aug. 15, 2018) (eLibrary No. 20180815-5047) (**Exhibit 61**).

pipeline that Transco already has in place and in operation,” and that “[f]actually, Transco has the infrastructure and pipeline in place to serve the Southeast ... for many years.”¹¹⁹

d. The existence of precedent agreements with Atlantic’s affiliated monopoly utilities offers no contrary evidence that the ACP is needed.

On this new record, the Commission’s original finding of need has not merely grown stale but fully decayed. And Atlantic’s extension request provides no countervailing evidence to support a conclusion that an \$8 billion gas pipeline is needed. Unable to explain away the dramatic changes in regional energy demand that have occurred since the Certificate Order, Atlantic’s only claim of market need is that “[p]recedent agreements and transportation service contracts demonstrating the need for the Projects remain in place.”¹²⁰ But in the years since the original Certificate Order was issued, even Atlantic (through its lead developer, Dominion Energy) has recognized that this is insufficient.

In response to the Commission’s 2018 solicitation of public comment “on potential modifications to its approach to determining whether a proposed project is required by the public convenience and necessity ... [including] reliance on precedent agreements to demonstrate need for a proposed project,”¹²¹ Dominion Energy submitted comments in which it acknowledged concerns “that simple recitation of the existence of precedent agreements alone may be insufficient to demonstrate the need for a project.”¹²² Instead,

¹¹⁹ Transco Pet. for Reh’g 1, *In re: Joint Appl. & Pet. of S.C. Elec. & Gas Co. & Dominion Energy, Inc. for Review and Approval of a Proposed Business Combination*, Dkt. No. 2017-370-E (July 16, 2018) (**Exhibit 62**).

¹²⁰ Extension Request at 1.

¹²¹ Notice of Inquiry, *Certification of New Interstate Nat. Gas Facilities*, 163 FERC ¶ 61,042, at ¶ 51 (2018).

¹²² Comments of Dominion Energy, Inc. at 10, Dkt. No. PL18-1 (July 25, 2018) (eLibrary No. 20180725-5066) (**Exhibit 63**) (“Dominion Energy Comments”).

Dominion Energy advised that “the Commission should encourage applicants to demonstrate the need for projects by providing an explanation of the demand manifested by the precedent agreements.”¹²³ Dominion Energy’s comments also recognized that “the Commission might properly question whether an affiliate contract[,]” without a showing of independent business reason for purchasing capacity, is actually “a sham and not a legitimate reflection of need for the project.”¹²⁴

Atlantic has not fulfilled even its own standard here—nor could it. When the Commission issued its original Certificate, nearly 80% of the gas transported by the ACP was proposed to be used as fuel at power plants.¹²⁵ But as set forth above, demand for the gas that would be supplied by the ACP has plummeted, if not completely vanished. Far from providing an independent business reason for purchasing capacity on one of the country’s most expensive gas pipelines,¹²⁶ Dominion has disclosed that “significant build-out of natural gas generation facilities is not currently viable.”¹²⁷ And the Virginia State Corporation Commission has confirmed that Dominion’s existing pipeline capacity portfolio is adequate for its existing generation fleet.¹²⁸ Similarly in North Carolina, demand for new gas to fuel power plants has all but disappeared and significant build-out of gas-fired electric generation

¹²³ *Id.*

¹²⁴ *Id.* at 18.

¹²⁵ EIS 1-3.

¹²⁶ DiSavino, *supra* note 4.

¹²⁷ Dominion Motion for Relief ¶ 9.

¹²⁸ *See* Order 3 n.8, *2018 Fuel Factor Proceeding*; Order 3 n.8, *2019 Fuel Factor Proceeding*; Order 4 n.8, *2020 Fuel Factor Proceeding*; *see also* Synapse Report at 18–19 (noting that “all gas generation in Dominion’s service territory falls” between 2028 and 2030).

is inconsistent with Duke Energy’s own corporate carbon reduction targets.¹²⁹ Atlantic’s precedent agreements, the majority of which are between Atlantic and its affiliated monopoly utilities or their subsidiaries,¹³⁰ merely reflect the utilities’ judgment that they will recover their now-increased capacity costs from their captive ratepayers.¹³¹ Such purported evidence of market need is akin to no evidence at all.

Finally, the precedent agreements that were in place when the Commission issued the Certificate Order have since been renegotiated.¹³² This matters because whether there was ever a legitimate need for the ACP, changes over the last three years indicate that any such need for the project as originally proposed no longer exists. If the project is no longer needed in its originally proposed form, it is the Commission’s obligation to consider whether there are ways to meet any remaining need that better further the public interest. Pointing solely to the existence of undisclosed, renegotiated precedent agreements is insufficient even by Atlantic’s standards.

The recent abandonment of the Constitution Pipeline, a proposed 124-mile gas pipeline from Pennsylvania to New York, only proves the point. The Commission twice extended the project’s construction and in-service deadlines, finding that the project

¹²⁹ See Section III.B.1.b.

¹³⁰ Certificate Order ¶¶ 9, 59, 60.

¹³¹ See *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990) (warning against “monopolists negotiating a deal which transfers all risk ... downstream to the end-user”); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at ¶ 49 (2009) (“We will apply a higher level of scrutiny when affiliates of the ... developer are anchor customers due to the absence of arms’ length negotiations ... [and] concerns that a utility affiliate contract could shift costs to captive ratepayers of the affiliate.”).

¹³² Dominion Energy, Quarterly Report (Form 10-Q) at 60 (May 5, 2020), <https://bit.ly/2AjGFpF> (**Exhibit 64**); Duke Energy, Quarterly Report (Form 10-Q) at 57 (May 12, 2020), <https://bit.ly/38h83RG> (**Exhibit 65**). The terms of the new agreements have been shared with neither the public nor, apparently, the Commission.

remained in the public interest based entirely on the existence of precedent agreements.¹³³

Using the eminent domain authority conferred by the Commission’s certificate, the developers condemned and destroyed landowners’ property. In New Milford Township, Pennsylvania, the developers chopped down 558 ash and sugar maple trees on the Holleran family’s land, ruining their nascent maple syrup business.¹³⁴

Then, in February 2020, the developers (including Duke Energy) abandoned the project.¹³⁵ Tellingly, in announcing its cancellation, lead developer The Williams Companies (“Williams”) downplayed the need for the Constitution Pipeline that the Commission had repeatedly claimed was demonstrated by the precedent agreements themselves. Williams pointed to its “existing pipeline network and expansions” that “offer much better risk adjusted return than greenfield opportunities,” and admitted that it could “deliver the ... benefits of natural gas now through infrastructure projects like Regional Energy Access, Leidy South and the Northeast Supply Enhancement.”¹³⁶ This admission was likely of little consolation to landowners in the abandoned project’s path.

2. New information demonstrates that construction and operation of the ACP would have significant environmental effects not previously considered by the Commission.

The Commission recognizes that “environmental impacts are subject to change, and that the validity of [its] conclusions and environmental conditions cannot be sustained

¹³³ *Constitution Pipeline Co.*, 157 FERC ¶ 61,145, at ¶ 13 (2016) (denying rehearing of letter order granting first two-year extension); *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at ¶ 16 (granting second two-year extension).

¹³⁴ Jon Hurdle, *A Company Cut Trees for a Pipeline That Hasn’t Been Approved*, State Impact Pa. (July 12, 2018), <https://n.pr/3dBZWQR>.

¹³⁵ Mary Esch, *Costs, Delays Scuttle 124-Mile Constitution Pipeline Project*, Associated Press (Feb. 24, 2020), <https://bit.ly/2Bu3g3w>.

¹³⁶ *Feb. 24 Media Statement*, Constitution Pipeline (Feb. 24, 2020), <https://constitutionpipeline.com> (**Exhibit 66**).

indefinitely.”¹³⁷ As part of its review of a request to extend the construction and in-service deadline in a certificate of public convenience and necessity, the Commission evaluates whether its prior determination that the project is an environmentally acceptable action has been undermined by either (1) “substantial changes in the proposed action that are relevant to environmental concerns” or (2) “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”¹³⁸

In its extension request, Atlantic addresses only the first of these two questions, asserting that “no changes in the Projects have been made that would alter the results of the Commission’s environmental review to any significant extent.”¹³⁹ Notably, Atlantic’s request is devoid of any claim that no significant environmental information bearing on the ACP has arisen since the Commission performed its environmental review—and for good reason. As set forth in Conservation Intervenors’ Motion to Supplement Environmental Impact Statement, filed on May 30, 2020,¹⁴⁰ new information arising since the Commission released its EIS in July 2017 and Certificate Order in October 2017 presents a seriously different picture of the project’s environmental impacts than the Commission previously considered. In light of this substantial new information—on endangered and threatened species, water quality, environmental justice communities, climate change, pipeline integrity, and cumulative impacts—the Commission cannot reasonably rely on its three-year-old determination that the ACP is an environmentally acceptable action.

¹³⁷ *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at ¶ 17.

¹³⁸ *Id.* (citing 40 C.F.R. 1502.9(c)(1)(i)–(ii)).

¹³⁹ Extension Request at 1.

¹⁴⁰ Mot. to Suppl. Envtl. Impact Statement by Alliance for the Shenandoah Valley et al., Dkt. Nos. CP15-554 et al. (May 30, 2020) (FERC eLibrary No. 20200601-5038) (**Exhibit 67**).

- a. *Significant new information and circumstances related to impacts on endangered and threatened species undermines the Commission’s prior environmental analysis.*

Since the issuance of the Certificate Order, significant new circumstances and information have developed regarding the ACP’s impacts on three species protected under the ESA: rusty-patched bumble bee (“RPBB”), candy darter, and yellow lance. The “degree to which [an] action may adversely affect an endangered or threatened species or its [critical] habitat” is relevant under NEPA.¹⁴¹ Multiple endangered rusty-patched bumble bees have been found along the pipeline’s route since 2017; the candy darter and yellow lance, two species in the ACP’s path, have been newly listed as endangered and threatened, respectively; and FWS has proposed critical habitat along the pipeline route for both newly listed species. Based on this new information, the project is likely to have more severe adverse impacts on these species than the Commission considered in issuing the Certificate Order.

Although the ACP has been subject to ongoing consultation under Section 7 of the ESA, the Commission cannot treat that process as a substitute for NEPA compliance.¹⁴² There are at least two important differences between the ESA’s consultation process and NEPA’s environmental review. First, “the ESA Section 7 consultation process does not define cumulative impacts in the same way that NEPA does.”¹⁴³ Whereas the cumulative

¹⁴¹ 40 C.F.R. § 1508.27(b)(9).

¹⁴² *See San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 650 (9th Cir. 2014) (“We cannot say that Section 7 of the ESA renders NEPA ‘superfluous’ when the statutes evaluate different types of environmental impacts through processes that involve varying degrees of public participation.”).

¹⁴³ *Fund for Animals v. Hall*, 448 F. Supp. 2d 127, 136 (D.D.C. 2006).

impacts analysis under the ESA focuses on non-federal actions within the action area,¹⁴⁴ the cumulative impacts analysis under NEPA includes federal actions and is not limited by the ESA concept of “action area.”¹⁴⁵

Second, “the ESA’s Section 7 consultation process fails to provide for public comment in the same way that NEPA does.”¹⁴⁶ If anything, new information revealed through the Section 7 process underscores the need for additional NEPA analysis informed by public comment.

- i. New information reveals that the pipeline will more significantly impact the endangered rusty-patched bumble bee.

When the Commission issued its EIS in July 2017, it determined that “[c]onstruction activities associated with ACP and [Supply Header Project] are not expected to impact individual rusty patched bumble bees” and that while “FWS has identified ‘high potential zones’ around ... records where the species is most likely to be present ... neither ACP nor [Supply Header Project] intersect a high potential zone.”¹⁴⁷ As a result, the Commission

¹⁴⁴ See 50 C.F.R. § 402.02 (defining “cumulative effects” under ESA).

¹⁴⁵ See 40 C.F.R. § 1508.7 (defining “cumulative impact” under NEPA); 50 C.F.R. § 402.02 (defining “action area” for ESA purposes). A recent example from FWS’s ongoing ESA review of the ACP’s impacts on RPBB highlights this distinction. As part of its cumulative impacts analysis, FWS declined to consider information about a proposed timber sale near the ACP’s proposed route, saying that under the ESA, the timber sale “doesn’t apply since it’s a federal action.” Email from Sumalee Hoskin, FWS, to Carol Croy, U.S. Forest Serv. (Aug. 29, 2018) (**Exhibit 68**).

¹⁴⁶ *Fund for Animals*, 448 F. Supp. 2d at 136; see also *Catron Cty. Bd. of Comm’rs v. U.S. Fish & Wildlife Serv.*, 75 F.3d 1429, 1437 (10th Cir. 1996) (holding “ESA requirements for notice and environmental consideration *partially* fulfill the primary purposes of NEPA” but partial fulfillment “is not enough”).

¹⁴⁷ EIS 4-314.

concluded that the project was unlikely to have an adverse impact on RPBB.¹⁴⁸ New information made available since publication of the EIS materially affects that conclusion.

Since 2017, various state, federal, and private surveyors have documented multiple occurrences of RPBB in the path of the ACP along the Virginia/West Virginia border.¹⁴⁹ It is now understood that the project will disturb RPBB “high potential zones” and “primary dispersal zones”; FWS has determined that project construction is likely to cause significant adverse impacts to RPBB, including the loss of individuals and nests.¹⁵⁰

These impacts will be inflicted on a species that “is so imperiled that *every remaining population* is important for the continued existence of the species.”¹⁵¹ As of 2016, “[u]nder the most likely future risk scenario” the species was expected to be extirpated in all but one ecoregion within five years, with “the remaining ecoregion ... projected to decline to extinction in 30 years.”¹⁵² RPBB is in the direst of straits.

Impacts to the populations along the Virginia/West Virginia border are likely to be acutely felt because of the importance of the affected population(s) to the overall status of RPBB.

The RPBB populations [affected by the ACP] are of global significance in our efforts to prevent extinction of this species. RPBBs in the Bath/Highland County area are one of just five populations (or metapopulations) reported outside of the Midwest in the last decade, the other four consisting of single-

¹⁴⁸ *Id.* at 4-315.

¹⁴⁹ See *Rusty Patched Bumble Bee Map*, FWS, <https://bit.ly/2TJsil2> (last visited July 1, 2020) (providing shapefiles documenting specimen detections).

¹⁵⁰ See, e.g., FWS, Biological Opinion 23–24, 41–42, Dkt. Nos. CP15-554 et al. (Sept. 11, 2018) (eLibrary No. 20180917-3001) (**Exhibit 69**).

¹⁵¹ See FWS, Survey Protocols for the Rusty Patched Bumble Bee 1 (Apr. 12, 2019), <https://bit.ly/2Ajffji> (**Exhibit 70**) (emphasis added).

¹⁵² FWS, Rusty Patched Bumble Bee Species Status Assessment 74 (June 2016), <https://bit.ly/2Ber2Ad> (**Exhibit 71**).

bee observations that researchers have not been able to confirm across multiple years of inventory.¹⁵³

Because the affected populations have outsized importance to the overall survival of the species, adverse impacts inflicted on those populations are more consequential for the species' overall survival.

This information paints a seriously different picture of the impacts of the project on RPBB. Because the information is new, none of it appeared in the EIS where the Commission weighed the ACP's benefits against its detrimental effects. The EIS assumed the project would have *no* impact on the species; in fact, new information now shows it would cause significant adverse impacts to one of the most important remaining populations of a highly endangered species.

- ii. The listing of the endangered candy darter suggests greater impacts from the ACP than previously considered.

The EIS's discussion of impacts to candy darter—a freshwater fish found only in Virginia and West Virginia—was brief. In totality, the EIS stated that “the candy darter is not currently listed under the ESA”; disclosed that candy darter “has the potential to occur in Pocahontas County, West Virginia within the ACP project area” but that surveys for the species had not been completed; and recommended assuming candy darter presence and applying enhanced conservation measures at certain waterbody crossings.¹⁵⁴ Since

¹⁵³ Letter from Patrick Hunter, SELC, to Paul Phifer, FWS, Ex. D (RPBB Inventory for Virginia and West Virginia) at 11, Dkt. Nos. CP15-554 et al. (Oct. 1, 2019) (eLibrary No. 20191018-5045) (**Exhibit 72**) (“Hunter Letter”).

¹⁵⁴ EIS 4-292 to 4-293.

publication of the EIS, the candy darter has been listed as endangered under the ESA,¹⁵⁵ and FWS has proposed designating critical habitat that overlaps with the ACP project area.¹⁵⁶

The listing of a species may not *always* constitute a new circumstance necessitating supplemental analysis, as long as the original analysis adequately assessed impacts to the species and that assessment was not based on the species' non-listed status.¹⁵⁷ Here, however, the EIS based its analysis on the fact that the “candy darter is not currently listed under the ESA” and then offered almost no analysis of the ACP's impact on the species beyond recommending application of enhanced conservation measures at certain crossings.¹⁵⁸

An updated Species Status Assessment Report for candy darter, also released after publication of the EIS, acknowledges that large interstate gas pipelines like the ACP would degrade candy darter habitat but does not analyze what that degradation might mean for candy darter in light of its new endangered status, underscoring why further analysis by the Commission is critical.¹⁵⁹ The updated Species Status Assessment also underscores the need for cumulative impacts analysis under NEPA for candy darter in light of its new listing status. While the EIS acknowledged that “candy darter would be affected by both ACP and

¹⁵⁵ Candy Darter Final Listing Rule, 83 Fed. Reg. 58,747 (Nov. 21, 2018).

¹⁵⁶ Candy Darter Proposed Critical Habitat, 83 Fed. Reg. 59,232 (Nov. 21, 2018).

¹⁵⁷ *Compare Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 344 (9th Cir. 1996) (listing of species as threatened did not require supplemental EIS where prior determination that project would not adversely affect species was not based on non-listed status), *with Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 559 n.5 (9th Cir. 2000) (designating species as “sensitive” necessitated supplemental EIS where effects of project on species had not been previously considered).

¹⁵⁸ See EIS 4-292 to 4-293.

¹⁵⁹ See FWS, Special Status Assessment Report for the Candy Darter 39 (Mar. 2018), <https://bit.ly/3c8l9RD> (**Exhibit 73**).

MVP,” it did not analyze the cumulative effect of those two large interstate gas pipelines on the species.¹⁶⁰ Nor did it consider the cumulative effect on candy darter of other potential federal projects, such as the Forest Service’s Greenbrier Southeast Project, Panther Ridge Project, or Eastern Divide Insect and Disease Project Phase II, all of which may affect the species.¹⁶¹

FWS’s proposed critical habitat designation is likewise new information that the Commission has not previously considered. The EIS assumed there was no critical habitat for candy darter and thus provided no analysis of any impact to that habitat. The proposed critical habitat is significant new information because it (1) confirms candy darter presence in streams crossed by the ACP;¹⁶² (2) establishes that those streams provide “physical or biological features [that] are essential to the conservation of the candy darter;”¹⁶³ and (3)

¹⁶⁰ See EIS 4-610. An October 1, 2019 letter from SELC raised with FWS the combined impact of both the MVP and the ACP on candy darter. See Hunter Letter. That letter also made the point that to “accurately assess sediment impacts, FWS must revisit its prior sedimentation analyses for ACP and MVP.” *Id.* at 5. It appears that the MVP’s developer has completed an “updated technical analysis of potential project-related sedimentation.” See Letter from Cindy Schulz, FWS, to Dr. James Martin, FERC (Apr. 27, 2020) (**Exhibit 74**). Atlantic must also update its sedimentation analysis. If that updated analysis shows different sedimentation effects than previously disclosed, such effects may also constitute significant new information.

¹⁶¹ See U.S. Forest Serv., Greenbrier Southeast Project Draft Env’tl. Assessment 26–27 (Apr. 2020), <https://bit.ly/2XetfEh> (**Exhibit 75**); U.S. Forest Serv., Panther Ridge Wildlife Habitat Enhancement Project Env’tl. Assessment 30–31 (Apr. 2019), <https://bit.ly/2AfFQhi> (**Exhibit 76**); U.S. Forest Serv., E. Divide Insect & Disease Project Phase II Env’tl. Assessment 23 (Dec. 2019), <https://bit.ly/3cdNnur> (**Exhibit 77**); SELC, E. Divide Insect & Disease Phase II Comments 38–42 (Feb. 26, 2020) (**Exhibit 78**).

¹⁶² See 83 Fed. Reg. 59,236 (noting that several streams crossed by the ACP are “occupied by the species”).

¹⁶³ *Id.* at 59,235.

confirms that effects associated with the ACP such as increased “sedimentation and stream bottom embeddedness” are a threat to those features.¹⁶⁴

- iii. The threatened yellow lance’s listing suggests a more severe impact on the species than envisioned in the EIS.

The listing of yellow lance, a freshwater mussel, as threatened and FWS’s proposed critical habitat designation for the species constitute significant new circumstances not addressed by the Commission’s prior environmental analysis.¹⁶⁵

The EIS disclosed the presence of yellow lance in the project area but stopped short of analyzing the ACP’s impact on the species or its habitat. Because the “degree to which [an] action may adversely affect an endangered or threatened species” is relevant to significance thresholds under NEPA, the “degree” must be considered in agency NEPA documents.¹⁶⁶ The Commission’s prior determination that the ACP was an environmentally acceptable action involved no analysis of impacts to yellow lance or its habitat.

The proposed critical habitat designation constitutes significant new information for the additional reason that it documents the threat the ACP poses to yellow lance and its habitat. The ACP mainline and lateral line are proposed to cross waterbodies in the Nottoway River watershed over 100 times.¹⁶⁷ Portions of that watershed have been proposed as critical habitat for yellow lance.¹⁶⁸ The proposed critical habitat designation notes specifically that “threats to this [critical habitat unit] include oil and gas pipeline projects”

¹⁶⁴ *Id.*

¹⁶⁵ See Yellow Lance Final Listing Rule, 83 Fed. Reg. 14,189 (Apr. 3, 2018); Yellow Lance Proposed Critical Habitat, 85 Fed. Reg. 6856 (Feb. 6, 2020).

¹⁶⁶ 40 C.F.R. § 1508.27(b)(9).

¹⁶⁷ See EIS App. K.

¹⁶⁸ See 85 Fed. Reg. at 6863.

such as the ACP and “alternate routes for oil and gas pipelines, or directional boring for those projects” may be required to sufficiently protect the species and its habitat.¹⁶⁹ This information paints a seriously different picture of impacts to yellow lance than disclosed in the EIS.

- b. Significant new information suggests more severe water quality impacts from construction of the ACP than the Commission previously considered.*

The three years since the issuance of the Certificate Order have witnessed the repeated failure of erosion control and landslide prevention measures and the rollback of federal water quality protections. This new information undermines the Commission’s reliance on such safeguards to protect water quality along the ACP route and suggests that construction will result in more significant impacts to water quality than previously considered, including violations of Virginia and West Virginia water quality standards.¹⁷⁰

- i. Recent failures of mitigation measures relied on by the Commission compel reevaluation of water quality impacts.

The EIS concluded that “impacts on surface waters would be effectively minimized or mitigated, and would be largely temporary in duration” based on the application of proposed mitigation measures contained in the EIS and in other federal or state permits.¹⁷¹

Since the EIS’s release in 2017, substantial erosion, sedimentation, and slope failures have

¹⁶⁹ *Id.*

¹⁷⁰ *See* 40 C.F.R. § 1508.27(b)(10).

¹⁷¹ EIS 5-10.

occurred along the routes of the ACP and other pipelines in mountainous terrain, undermining the Commission’s conclusions and calling for additional analysis.¹⁷²

- A. Chronic failures of erosion control measures indicate that erosion and sedimentation impacts will be more significant than the EIS disclosed.

Since 2018, nearly half of the Environmental Compliance Monitoring Reports the Commission has issued for the ACP have reported that rain events overwhelmed Atlantic’s erosion control devices.¹⁷³ Atlantic has also reported several sediment spills in construction areas that violated West Virginia’s water quality standards.¹⁷⁴ After one incident, it took over a week for the stream to reach acceptable turbidity levels.¹⁷⁵ And the West Virginia Department of Environmental Protection (“DEP”) has already issued four notices of violation to Atlantic during less than a year of active construction along a small portion of the pipeline.¹⁷⁶

¹⁷² Contrary to the Commission’s claim in its order on rehearing, merely requiring mitigation and then monitoring it do not alone constitute “substantial evidence” of its effectiveness, *see Atl. Coast Pipeline, LLC*, 164 FERC ¶ 61,100, at ¶ 228 (2018) (“Rehearing Order”). The *Abenaki* case relied on by the Commission concluded that mitigation measures were supported by substantial evidence where they were adequately monitored for effectiveness and where, if they failed, “a *supplementary* mitigation ... proposal” had to be reviewed and approved by the agency. *Abenaki Nation of Missisquoi v. Hughes*, 805 F. Supp. 234, 239 n.9 (D. Vt. 1992) (emphasis added). Indeed, in the other case the Commission relied on, the court concluded that because the Forest Service did *not* consider alternatives in the event a mitigation measure failed, the proposed mitigation was *not* supported by substantial evidence. *Nat’l Audubon Soc’y v. Hoffman*, 132 F.3d 7, 17 (2d Cir. 1997).

¹⁷³ *See Exhibit 79* (34 Environmental Compliance Monitoring Reports for ACP documenting overwhelmed erosion control devices).

¹⁷⁴ *See, e.g.* Letter from Richard Gangel, Dominion Energy Servs., Inc., to Timothy J. Casto, W.Va. Dep’t of Env’tl. Prot. (Aug. 22, 2018) (**Exhibit 80**).

¹⁷⁵ Letter from Richard Gangel, Dominion Energy Servs., Inc., to Timothy J. Casto, W.Va. Dep’t of Env’tl. Prot. (Aug. 27, 2018) (**Exhibit 81**).

¹⁷⁶ *See Exhibit 82* (4 notices of violations issued by DEP to Atlantic for violations of water pollution control permit and water quality standards).

Other area gas pipelines have experienced similarly serious problems with erosion control devices. Since April 2018, DEP has issued 46 notices of violation to the MVP’s developer, including for violations of West Virginia water quality standards for turbidity.¹⁷⁷ Virginia DEQ filed suit against the MVP’s developer for its hundreds of violations of state water quality requirements.¹⁷⁸ Similarly, between April 2018 and February 2020, DEP issued 53 notices of violations for problems on the Mountaineer Xpress project.¹⁷⁹ The most common problems cited in these notices were the incorrect use of water bars and overwhelmed erosion control devices¹⁸⁰—the same problems now plaguing the ACP.

This recent field experience shows that far from effectively “minimizing and mitigating,” the ACP’s proposed erosion control measures may be incapable of preventing significant water quality impacts from pipeline construction.

- B. Repeated landslides along the ACP and other area pipelines suggest that landslide impacts will be more significant than the EIS concluded.

Construction of the ACP along steep slopes in West Virginia has already led to at least 15 reported slope failures.¹⁸¹ Citizen monitors have also reported numerous slips and

¹⁷⁷ See **Exhibit 83** (46 notices of violations issued by DEP to MVP’s developer for violations of water pollution control permit and water quality standards).

¹⁷⁸ Complaint, *Paylor v. Mountain Valley Pipeline, LLC*, No. CL18006874-00 (Va. Cir. Ct. Dec. 7, 2018), <https://bit.ly/3dkgI7K>. In response to these failures, the MVP’s developer maintained that its “controls were properly installed,” such that the problem is not just with the implementation of the mitigation measures but with the adequacy of the measures themselves. See Laurence Hammack, *Construction Halted at Mountain Valley Pipeline Work Site Following Severe Erosion in Franklin County*, Roanoke Times (May 20, 2018), <https://bit.ly/2D1C24J>.

¹⁷⁹ See **Exhibit 84** (53 notices of violations issued by DEP to Mountaineer Xpress’s developer for violations of water pollution control permit and water quality standards).

¹⁸⁰ *Id.*

¹⁸¹ Letters from Richard Gangel & Spencer Trichell, Dominion Energy Servs., to Harold D. Ward, DEP (Apr. 17, 2019, Apr. 12, 2019, and Mar. 26, 2019) (**Exhibit 85**).

mudslides along the MVP route.¹⁸² In August 2019, the MVP’s developer reported a landslide along the route that posed a threat to landowners located downslope of the slide, making at least one individual’s home unsafe to occupy.¹⁸³ In May 2020, MVP crew members observed that installed pipe had shifted as a result of “landslips” in at least three locations in West Virginia.¹⁸⁴

Sixty-one separate landslides have been reported along the Mountaineer Xpress right-of-way, prompting FWS to recommend that developers conduct additional siting or analysis or use additional construction controls to prevent additional slips.¹⁸⁵ FWS further recommended that for future pipeline projects, the Commission conduct more detailed analyses to identify landslide prone areas prior to approving construction to prevent developers from continuing to site projects in such areas.¹⁸⁶

Considering that a landslide resulted in the explosion of the Leach Xpress gas pipeline in 2018,¹⁸⁷ the Commission must take seriously this new information relevant to the adequacy of proposed landslide controls. Indeed, prompted by several incidents in which earth movement resulted in the rupture of a pipeline—including three notable accidents in West Virginia—the Pipeline and Hazardous Materials Safety Administration (“PHMSA”)

¹⁸² Letter from Indian Creek Watershed Bd. of Directors to Kimberly D. Bose, FERC, 5, Dkt. No. CP16-10 (May 6, 2020) (eLibrary No. 20200507-5054) (**Exhibit 86**).

¹⁸³ Letter from Matthew Eggerding, Mountain Valley Pipeline, LLC, to Kimberly D. Bose, FERC, Dkt. No. CP16-10 (Aug. 8, 2019) (eLibrary No. 20190808-5134) (**Exhibit 87**).

¹⁸⁴ FERC, Env’tl. Compliance Monitoring Program, Weekly Summary Report 5–8, Dkt. No. 16-10 (Apr. 24, 2020) (eLibrary No. 20200424-4001) (**Exhibit 88**).

¹⁸⁵ Supplemental Information – April 10 Variance Request at 26, Dkt. No. 16-357 (May 30, 2019) (eLibrary No. 20190530-5170) (**Exhibit 89**).

¹⁸⁶ *Id.* at 28.

¹⁸⁷ See Mike Soraghan, *Landslides, Explosions Spark Fear in Pipeline Country*, E&E News (June 4, 2019), <https://bit.ly/2M5p7jq>.

issued an advisory bulletin in May 2019 entitled “Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards.”¹⁸⁸ PHMSA’s advisory warned that landslides and “variable, steep, and rugged terrain ... can pose a threat to the integrity of pipeline facilities if those threats are not identified and mitigated.”¹⁸⁹ The advisory’s recommendations included “[r]e-routing the pipeline right-of-way prior to construction to avoid areas prone to large ground movement such as unstable slope areas” and “[r]e-routing the pipeline when other appropriate mitigation measures cannot be effectively implemented to maintain safety.”¹⁹⁰ Based on the slope failures along the ACP, MVP, and Mountaineer Xpress routes, there is now good reason to believe that, for the ACP, “mitigation measures cannot be effectively implemented to maintain safety.”

- ii. Recent regulatory changes may remove water quality protections relied on by the Commission.

The Commission’s original environmental review also could not have accounted for the impacts to water quality and other resources from an intervening change in the scope of the Clean Water Act. On April 21, 2020, the U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers (“Corps”) published a final rule changing the definition of “waters of the United States” to grant federal protection to far fewer waterbodies and wetlands.¹⁹¹ Particularly relevant here, the new rule excludes from federal jurisdiction ephemeral features and many wetlands and ditches that were considered waters

¹⁸⁸ 84 Fed. Reg. 18,919 (May 2, 2019).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 18,920, 18,921.

¹⁹¹ *See* Navigable Waters Protection Rule, 85 Fed. Reg. 22,250 (Apr. 21, 2020). Conservation and Landowner Intervenors do not concede that the Navigable Waters Protection Rule is valid.

of the United States at the time of the development of the ACP's EIS, as well as the Construction, Operation, and Maintenance plan, and implementation plans.¹⁹²

The Commission analyzed the ACP's impacts on streams and wetlands at a time when many such ephemeral features, wetlands, and ditches were still under federal jurisdiction. The Commission's analysis identified 1,669 waterbody crossings over the course of the project, including 228 ephemeral streams, 49 canals/ditches, and 798.2 acres of wetlands.¹⁹³ In light of the narrower definition of waters of the United States, some of these waterbodies may now be at greater risk if permitting authorities no longer consider them within the purview of the Clean Water Act.

In particular, this regulatory change affects the EIS's baseline assumption that certain impacts will be controlled by conditions imposed by other federal agencies. For example, the EIS concluded that "[c]onstruction and operation-related impacts on wetlands" would be minimized or mitigated "by compliance with conditions imposed by the [Corps] and state water regulatory agencies."¹⁹⁴ The Commission may have to revisit that conclusion; the Navigable Waters Protection Rule disclaims Corps jurisdiction over many wetlands previously subject to federal protection.

The EIS also downplayed the potential for cumulative impacts to water quality by explaining that other "projects crossing Waters of the United States would have to obtain permits from the [Corps]. Therefore, most of the impacts on waterbodies are expected to also be of short duration and/or permissible under regulations implemented by the

¹⁹² *See id.* at 22,251–52.

¹⁹³ EIS 5-9; Certificate Order ¶ 225.

¹⁹⁴ EIS ES-10.

[Corps].”¹⁹⁵ Given that fewer waterbodies and wetlands are federally protected under the new rule, the Commission must reevaluate its dismissal of potential cumulative impacts based on Corps permitting.¹⁹⁶ To the extent the Commission intends to remove certain water quality protections required for ephemeral features, ditches, and wetlands in light of the new rule,¹⁹⁷ supplemental analysis would be required on that basis as well.

c. New information confirms the existence of an environmental justice community near the Buckingham Compressor Station.

In its EIS the Commission concluded that there were no minority environmental justice communities near the proposed compressor station in Buckingham County, Virginia.¹⁹⁸ Since that time, the Commonwealth of Virginia and Atlantic have both acknowledged the existence of a minority environmental justice community in Union Hill, where the Buckingham Compressor Station would be located.¹⁹⁹ Accordingly, the Commission must reevaluate its conclusion about the absence of minority environmental justice communities near the compressor station and consider whether the project should be rerouted to avoid this community.

¹⁹⁵ *Id.* at 4-606 to 4-607.

¹⁹⁶ *Cf. Friends of Back Bay v. U.S. Army Corps of Eng’rs*, 681 F.3d 581, 588 (4th Cir. 2012) (“An unjustified leap of logic or unwarranted assumption . . . can erode any pillar underpinning an agency action, whether constructed from the what-is or the what-may-be.”).

¹⁹⁷ *See, e.g.*, EIS ES-9 (requiring compliance with the Commission’s Wetland and Waterbody Construction and Mitigation Procedures).

¹⁹⁸ *Id.* at 4-513.

¹⁹⁹ *See Friends of Buckingham*, 947 F.3d at 88 n.10 (observing that Virginia’s counsel accepted study showing 84–85% of residents within 1.1 miles of Compressor Station are people of color); April 2020 Tornabene Letter at 1 (“analysis shows that an Environmental Justice community exists to the north and east of the [compressor station] along Union Hill Road[.]”).

The Commission also concluded in its EIS that compressor station “emissions would not exceed regulatory permissible levels ... [so] no disproportionately high and adverse impacts on environmental justice populations” would result.²⁰⁰ However, “blindly relying on ambient air standards” that are “not tailored to [the] specific [environmental justice] community” to reject the likelihood that those living closest to the compressor station would suffer from disproportionate health impacts “is not a sufficiently searching analysis.”²⁰¹ In light of the Fourth Circuit’s holding, and the Commission’s prior recognition that African Americans are more sensitive to decreased air quality,²⁰² the Commission must revisit its “no disproportionate impacts” conclusion regarding compressor stations and reconsider the Midland Road Alternative site, which the Commission rejected without consideration of environmental justice concerns.²⁰³

d. The establishment of state emissions reduction targets, continued federal government use of the Social Cost of Carbon, and substantial advances in scientific understanding of the impacts of climate change materially alter the Commission’s assessment of the ACP’s climate impacts.

Three significant developments have occurred since the Certificate Order that materially alter the Commission’s evaluation of the ACP’s impacts on climate change. First, Virginia and North Carolina have recently required that their power sectors reach zero or net-zero carbon emissions by 2045 and 2050, respectively, providing a standard against which the Commission can evaluate the ACP’s potential impacts on climate change. Second, the federal government’s continued use of the Social Cost of Carbon has further undercut the

²⁰⁰ EIS 4-514.

²⁰¹ *Friends of Buckingham*, 947 F.3d at 90, 93.

²⁰² See EIS 4-513 to 4-514.

²⁰³ *Id.* at 3-58.

Commission’s refusal to use the widely accepted methodology to monetize long-term climate harm. Third, the leading national and international scientific bodies on climate change have issued comprehensive new reports that substantially advance understanding about the projected scope and severity of climate impacts.

In the Certificate Order, the Commission claimed that it could not determine the significance of “downstream” greenhouse gas emissions—emissions of carbon dioxide and other greenhouse gases that drive climate change.²⁰⁴ In other recent orders authorizing gas infrastructure, the Commission has justified its decision not to consider the significance of a project’s greenhouse gas emissions on the basis that it could not “find any GHG emission reduction goals established either at the federal level or by the [state].”²⁰⁵ Since the issuance of the Certificate Order, however, both Virginia and North Carolina have set greenhouse gas emissions reduction targets.²⁰⁶ The Commission now has the specific benchmarks it has claimed it needs to determine the significance of downstream greenhouse gas emissions.²⁰⁷

²⁰⁴ Certificate Order ¶ 306 (citing EIS 4-620).

²⁰⁵ See, e.g., *Alaska Gasline Dev. Corp.*, 171 FERC ¶ 61,134, at ¶¶ 215, 216 (2020) (“Without *either* the ability to determine discrete resource impacts *or an established target to compare GHG emissions against*, the final EIS concludes that it cannot determine the significance of the project’s contribution to climate change. We agree with this finding.”) (emphasis added); FERC, Final EIS for Rio Grande LNG Project, Dkt. No. CP16-454 (Apr. 26, 2019) (eLibrary No. 20190426-3020) (same).

²⁰⁶ See Section III.C.1.a and b, *supra*.

²⁰⁷ Although the Commission has also cited its inability to “determine discrete resource impacts” as a reason it could not assess the significance of downstream greenhouse gas emissions, see FERC, Final EIS for MVP Southgate Project 4-263 to 4-264, Dkt. No. 19-14 (Feb. 14, 2020) (eLibrary No. 20200214-3010), the Commission does not apply this same standard to any other significance determination in its environmental assessment. See, e.g., *Jordan Cove Energy Project, L.P.*, 171 FERC ¶ 61,136, at ¶ 23 (Glick, Comm’r, dissenting) (noting that the Commission has determined significance of loss of forested land that “supports multiple interacting layers of organisms that include plants, animals, fungi, and bacteria,” without “attempt[ing] to link [the] specific [number of] acres of forested land [lost] to direct or quantifiable adverse effects for the purpose of assessing significance.”).

The Commission also claimed it would be inappropriate to use the Social Cost of Carbon to assess the significance of downstream greenhouse gas emissions. As demonstrated by, *inter alia*, recent federal government practice, the Commission’s purported concerns with the methodology are unfounded. One of the principal bases the Commission cited for its refusal to use the Social Cost of Carbon to assess the ACP’s climate impacts was that “no consensus exists on the appropriate rate” to discount future damages to present value, purportedly resulting in a range of values too wide to be useful.²⁰⁸ To the extent such consensus was lacking in 2017, however, consensus among expert agencies now exists around the most appropriate discount rate: 3%. Even EPA and the U.S. Department of Transportation, in their April 2020 rollback of vehicle fuel economy and greenhouse gas emissions standards, applied a 3% discount rate to future climate-related economic damages.²⁰⁹ Separately, the U.S. Department of Energy’s adoption, in January 2020, of four new energy efficiency standards using the original Interagency Working Group (“IWG”) estimates of the Social Cost of Carbon²¹⁰—noting, in each rulemaking, that the estimates had “been developed over many years, using the best science available”²¹¹—undercuts the

Moreover, the Commission has acknowledged that the Social Cost of Carbon “constitute[s] a tool that can be used to estimate incremental physical climate change impacts.” *Mountain Valley Pipeline*, 163 FERC ¶ 61,197, at ¶ 290.

²⁰⁸ Certificate Order ¶ 307.

²⁰⁹ The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174, 24,735 (Apr. 30, 2020).

²¹⁰ See Energy Conservation Program: Energy Conservation Standards for Portable Air Conditioners, 85 Fed. Reg. 1378, 1421–26 (Jan. 10, 2020); Energy Conservation Program: Energy Conservation Standards for Uninterruptible Power Supplies, 85 Fed. Reg. 1447, 1477–80 (Jan. 10, 2020); Energy Conservation Program: Energy Conservation Standards for Air Compressors, 85 Fed. Reg. 1504, 1562–67 (Jan. 10, 2020); Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers, 85 Fed. Reg. 1592, 1649–53 (Jan. 10, 2020).

²¹¹ 85 Fed. Reg. at 1424; 85 Fed. Reg. at 1479; 85 Fed. Reg. at 1565; 85 Fed. Reg. at 1652.

Commission’s suggestion that it could not use the Social Cost of Carbon because the IWG’s technical support documents and instructions regarding the methodology “are ‘no longer representative of governmental policy.’”²¹²

Finally, scientific understanding about the projected scope and severity of the impacts of climate change has expanded substantially since the Commission issued the EIS and Certificate Order. The EIS acknowledged that greenhouse gas emissions associated with construction and operation of the ACP “would ... contribute incrementally to climate change,”²¹³ and briefly listed environmental impacts projected to occur in ACP project areas that “may be attributed to climate change.”²¹⁴ New information in this area materially changes the EIS’s discussion of climate impacts, compelling the Commission to revisit the EIS’s analysis.

The Commission based its discussion on the U.S. Global Change Research Program’s (“USGCRP’s”) Third National Climate Assessment.²¹⁵ The Third National Climate Assessment is now six years old, and no longer reflects “the current state of climate science.”²¹⁶ In its Fourth National Climate Assessment, published in 2018, the USGCRP reports that “[o]ur understanding of and experience with climate science, impacts, risks, and adaptation in the United States have grown significantly since the Third National Climate

²¹² Certificate Order ¶ 307 (quoting Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 28, 2017)).

²¹³ EIS 4-620.

²¹⁴ *Id.* at 4-618 to 4-619; Rehearing Order ¶¶ 270–274.

²¹⁵ *See* EIS 4-618 to 4-619; *see also* U.S. Global Change Research Program, *Climate Change Impacts in the United States* (May 2014), <https://go.aws/2TNLgXS> (cover page at **Exhibit 90**) (“Third National Climate Assessment”). The EIS recognized the USGCRP as the “leading U.S. scientific body on climate change,” involving the participation of 13 federal departments and agencies. EIS 4-618.

²¹⁶ Rehearing Order ¶ 274.

Assessment.”²¹⁷ Among the USGCRP’s new findings is the projection that average temperatures in the United States could increase by as much as 12°F by the end of the century compared to pre-industrial temperatures if substantial reductions in emissions do not occur.²¹⁸ In contrast, the Third National Climate Assessment projected a 5°F to 10°F average temperature rise without substantial emissions reductions.²¹⁹

Scientific analysis also now provides a more detailed picture today of how climate change threatens the region to be served by the ACP. As the Fourth National Climate Assessment explains, scientific advances have enabled projections of future climate from global models at finer scales, resulting in enhanced local and regional information about sea level rise and other climate impacts than was previously available.²²⁰ Among other new information that appeared in neither the Third National Climate Assessment nor the EIS, the Fourth National Climate Assessment projects that by 2100, the Southeast’s coastal plain regions will experience daily high tide flooding, and the region could lose over one-half billion labor hours annually from heat-related illnesses and fatigue.²²¹

Finally, at the time of the EIS’s publication, limited knowledge existed about the projected global impacts of 1.5°C of warming and the feasibility of limiting global warming to 1.5°C.²²² In 2018, the International Panel on Climate Change (“IPCC”)—which the

²¹⁷ U.S. Global Change Research Program, *Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States* 65 (2018), <https://bit.ly/2Xa3BAg> (cover page at **Exhibit 91**) (“Fourth National Climate Assessment”).

²¹⁸ *Id.* at 74.

²¹⁹ Third National Climate Assessment at 8.

²²⁰ Fourth National Climate Assessment at 65.

²²¹ *Id.* at 757, 780.

²²² Int’l Panel on Climate Change, *Global Warming of 1.5°C* at v (2018), <https://bit.ly/3deWWdF> (cover page at **Exhibit 92**).

Commission has recognized as the “leading international, multi-governmental scientific body for the assessment of climate change,”²²³—presented that information for the first time in its special report *Global Warming of 1.5°C*. The report concluded that “[w]ithout ... a sharp decline in greenhouse gas emissions by 2030, global warming will surpass 1.5°C in the following decades, leading to irreversible loss of the most fragile ecosystems, and crisis after crisis for the most vulnerable people and societies.”²²⁴ The IPCC’s findings were dire:

- Global warming is *likely* to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate.²²⁵
- Climate-related risks for natural and human systems are higher for global warming of 1.5°C than at present. These risks include increases in mean temperatures; hot temperature extremes; heavy precipitation; the probability of drought; sea-level rise; ecosystem impacts (including species loss and extinction); ocean temperature and acidity; and risks to health, livelihoods, food security, water supply, human security, and economic growth.²²⁶
- There are clear benefits to keeping global warming to 1.5°C (2.7°F) rather than 2°C (3.6°F) or higher, as each of these risks is higher at 2°C than at 1.5°C.²²⁷
- Limiting global warming to 1.5°C is possible but would require unprecedented transitions in all aspects of society, with deep emissions reductions in all sectors.²²⁸

Because this information was not available until a year after the EIS’s publication (and after both the Certificate Order and Rehearing Order were issued), the Commission’s discussion of climate impacts included none of it. New scientific consensus around the likely impacts of climate change, its specific impacts on ACP project areas, and the importance of

²²³ EIS 4-618.

²²⁴ *Global Warming of 1.5°C* at vi.

²²⁵ *Id.* at 4 (emphasis in original).

²²⁶ *Id.* at 5, 7–9.

²²⁷ *Id.* at v–vi.

²²⁸ *Id.* at v, 15.

reducing greenhouse gas emissions over the short term (*i.e.*, by 2030) compel the Commission to revisit its consideration of the ACP's climate impacts.

- e. The Commission has never evaluated whether Atlantic's practice of leaving pipe exposed to the elements threatens the integrity of the pipeline.*

Another significant new circumstance relevant to the Commission's three-year-old NEPA analysis is Atlantic's handling of its pipe during its lengthy construction delays, which raises concerns about the integrity of the pipeline and potential environmental impacts not considered in the EIS.²²⁹

The ACP's pipes are coated with fusion-bonded epoxy ("FBE").²³⁰ FBE coatings are used to protect pipes from corrosion.²³¹ However, FBE coatings degrade in the presence of ultraviolet ("UV") light and humidity.²³² As a result, industry experts recommend that pipes with FBE coating should not be stored above ground for more than 6 to 12 months without UV protections.²³³ Dura-Bond, which manufactured the ACP's pipes, recommended that the

²²⁹ "The degree to which the proposed action affects public health or safety" is relevant under NEPA. 40 C.F.R. § 1508.27(b)(2).

²³⁰ Letter from Robert Burrough, PHMSA, to William F. Limpert 2 (June 1, 2018) (**Exhibit 93**) ("Burrough Letter"); *see also* EIS 2-35 (reporting that ACP pipe was to be delivered with "fusion-bonded epoxy or other approved coating").

²³¹ 3M, Technical Brief: UV Protection of Coated Line Pipe 1 (2014), <https://bit.ly/38du3Nw> (**Exhibit 94**).

²³² *Id.*; 3M, NAPCA Workshop: UV Protection of Line Coated Pipe 2 (Aug. 20, 2009), <https://bit.ly/2VtAJ4X> (**Exhibit 95**).

²³³ *See* Nat'l Ass'n of Pipe Coating Applicators, NAPCA Bulletin 12-78-04: External Application Procedures for Plant Applied Fusion Bonded Epoxy (FBE) Coatings and Abrasion Resistant Overlay (ARO) Coatings to Steel Pipe 8, <http://www.napca.com/pdf/Bulletin-12-78-04.pdf> (**Exhibit 96**) ("Above ground storage of coated pipe in excess of 6 months without additional Ultraviolet protection is not recommended"); 3M, Technical Brief: UV Protection of Coated Line Pipe 3 (citing study recommending that pipe stored longer than one year be protected from UV radiation).

pipes not be left exposed to sunlight for more than nine months.²³⁴ But Atlantic has admitted that ACP pipes at its laydown yards would be stored aboveground for longer than nine months, with at least some of the pipes exposed to direct sunlight.²³⁵ PHMSA inspections of pipe at Atlantic’s laydown yards in 2017 and 2018 revealed photoinitiated degradation, known as “chalking,” on most of the pipe coatings inspected.²³⁶ And in 2019, Atlantic had to dig up segments of previously installed pipe after it detected a “pipe coating anomaly” in several locations.²³⁷

The Commission has twice issued formal requests to Atlantic for information about the potential degradation of the ACP’s FBE coatings,²³⁸ seeking “[t]o ensure that the prolonged exposure of above-grade FBE coated pipeline along the project rights-of-way and at project pipeline storage yards is not resulting in environmental impacts that are inconsistent with the conclusions in the [EIS].”²³⁹ In light of these new circumstances, the Commission must consider the potential hazards of Atlantic installing pipe that has been left exposed to the elements; the extent of mitigation that may be required to ensure the integrity

²³⁴ Burrough Letter at 2.

²³⁵ *Id.* at 1, 2.

²³⁶ Letter from Madeline M. Van Nostrand, PHMSA, to Julie Reynolds-Engel, SELC, Attachs. (June 13, 2019) (**Exhibit 97**) (results of inspections of pipe at seven ACP laydown yards).

²³⁷ Letter from Colin J. Walthall, DETI, to Kimberly D. Bose, FERC, 1, Dkt. No. CP15-555 (Apr. 18, 2019) (eLibrary No. 20190418-5092) (**Exhibit 98**) (attaching status report for April 6-12, 2019, reporting anomaly in pipe coating of pipe that had already been lowered in and backfilled); Letter from Colin J. Walthall, DETI, to Kimberly D. Bose, FERC & Attach. 2, Dkt. No. CP15-555 (Apr. 24, 2019) (eLibrary No. 20190424-5136) (**Exhibit 99**) (requesting approval to conduct digging in seven areas to repair coating on buried pipe).

²³⁸ Letter from Dave Swearingen, FERC, to Matthew Bley, DETI, Dkt. Nos. CP15-554 et al. (July 3, 2019) (eLibrary No. 20190703-3011) (**Exhibit 100**); Letter from David Swearingen, FERC, to Matthew Bley, DETI, Dkt. Nos. CP15-554 et al. (June 30, 2020) (eLibrary No. 20200630-3033) (**Exhibit 101**) (“June 2020 Swearingen Letter”).

²³⁹ June 2020 Swearingen Letter, Encl. A at 2.

of this pipe; and the additional environmental harm that could accompany additional excavation and reinstallation of pipe.

f. *The Commission has never considered cumulative impacts from post-2019 project construction.*

NEPA requires a cumulative impacts analysis.²⁴⁰ In that analysis, the “incremental impact of the action [at issue] must be considered when added to other past, *present*, and *reasonably foreseeable future* actions.”²⁴¹

The EIS expressly considered the cumulative impacts of “projects that would occur during the same general timeframe” as the ACP,²⁴² and stressed that overall impacts to aquatic resources and species of concern “would be greatest where projects are constructed *in the same timeframe* and area” as the ACP.²⁴³ Because Atlantic initially proposed to perform construction activities between November 2017 and May 2019, the Commission’s “cumulative impact analysis considers current and other reasonably foreseeable projects that may be constructed within the geographic scope ... *up through about mid-2019.*”²⁴⁴

²⁴⁰ See *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1319 (D.C. Cir. 2014) (remanding Certificate Order to Commission for failure to consider cumulative impacts under NEPA); *Nat’l Audubon Soc’y v. Dep’t of Navy*, 422 F.3d 174, 197 (4th Cir. 2005) (vacating and remanding to agency for failure to adequately consider cumulative impacts under NEPA).

²⁴¹ *Am. Rivers v. FERC*, 895 F.3d 32 (D.C. Cir. 2018) (alteration in original; emphasis added); see 40 C.F.R. § 1508.7 (defining “cumulative impact”).

²⁴² EIS 4-595.

²⁴³ *Id.* at 4-608, 4-610 (emphasis added).

²⁴⁴ *Id.* at 4-592 (emphasis added). This time limitation is reflected in Table W-1’s list of projects “that would potentially cause a cumulative impact when considered with” the ACP. *Id.* at 4-595. The Commission limited “Past, Present, or Reasonably Foreseeable Future Action (RFFA) classification” to “the project’s construction schedule *in relation to Atlantic’s and DETI’s currently proposed schedules.*” *Id.* App. W at W-16 (emphasis added).

It is now mid-2020. Only 6% of the ACP has been completed.²⁴⁵ According to the ACP's lead developer, construction is anticipated to resume in 2020 and last until the end of 2021.²⁴⁶ Yet the EIS contains no analysis of cumulative impacts over the period—mid-2020 to 2021—when ACP's lead developer anticipates that the overwhelming majority of the ACP's construction would occur. The Commission could not lawfully approve a standalone project without considering cumulative impacts.²⁴⁷ It can no more allow construction of over 90% of a project to proceed without any consideration of cumulative impacts from this point forward. Because the Commission never considered post-2019 cumulative impacts in the EIS, it cannot grant the requested extension without evaluating all new projects that might affect the environment in the area of the ACP and analyzing their cumulative impacts. These include logging, transportation, and other pipeline projects—projects of the type that the Commission considered in its EIS but that were never assessed due to the EIS's mid-2019 cutoff.

A key consideration in the EIS's analysis of impacts to forest fragmentation, water quality, and wildlife was logging projects pursued by the Forest Service in the Monongahela National Forest and the George Washington and Jefferson National Forests.²⁴⁸ The current and past Schedule of Proposed Actions for both national forests lists numerous new projects

²⁴⁵ Weber, *supra* note 7.

²⁴⁶ See Dominion Energy, Q4 2019 Earnings Call 24 (Feb. 11, 2020), <https://bit.ly/2zcrePF> (**Exhibit 102**). Even that estimate of project completion by the end of 2021 is likely overly optimistic, because a subsequent federal court decision vacating the Corps' Nationwide Permit 12—on which Atlantic intended to rely to satisfy its obligations under Clean Water Act Section 404, 33 U.S.C. § 1344—is likely to further delay the project. See *N. Plains Res. Council v. U.S. Army Corps of Eng'rs*, No. CV-19-44-GF-BMM, 2020 WL 1875455, at *7-8 (D. Mont. Apr. 15, 2020).

²⁴⁷ See, e.g., *Del. Riverkeeper Network*, 753 F.3d at 1319.

²⁴⁸ See EIS App. W.

that do not appear in the EIS’s cumulative impacts analysis.²⁴⁹ Moreover, the Commission has not accounted for increased logging over the next several years in response to Executive Order 13855, which calls for a significant acceleration in the timbering of national forests.²⁵⁰

The Commission’s consideration of cumulative effects must also account for increased logging from biomass facilities in eastern Virginia and North Carolina. There are currently five operating wood pellet plants with sourcing areas that overlap the ACP project area, under the conservative assumption that sourcing areas constitute a 50-mile radius around each plant.²⁵¹ Only one, Enviva Sampson, was considered in the EIS.²⁵² Since the issuance of the EIS, however, four of the five plants, including Enviva Sampson, received new permits authorizing substantial increases in production.²⁵³ Conservatively estimating that plant modifications to expand production would take two years to install, these facilities are projected to produce between 2,415,000 to 3,110,000 metric tons of pellets per year (“MTPY”) between 2019 and 2022.²⁵⁴ This massive level of production will require harvesting 44,207 to 56,929 acres of forest *per year* between 2019 and 2022²⁵⁵—a potentially significant cumulative impact for the impacted area, particularly when added to

²⁴⁹ See U.S. Forest Serv., George Washington and Jefferson National Forest Current and Past Schedule of Proposed Actions, <https://bit.ly/2MbJc7M> (last visited July 1, 2020) (**Exhibit 103**); U.S. Forest Serv., Monongahela National Forest Current and Past Schedule of Proposed Actions, <https://bit.ly/3ccZt6P> (last visited July 1, 2020) (**Exhibit 104**).

²⁵⁰ See Exec. Order No. 13,855, 84 Fed. Reg. 45 (Dec. 21, 2018).

²⁵¹ See **Exhibit 105** (Map of Southeast U.S. Wood Pellet Plants in 2020).

²⁵² See EIS App. W, tbl. W-5.

²⁵³ Compare **Exhibit 106** (Map of Southeast U.S. Wood Pellet Plants in 2018) with **Exhibit 105** (2020 map).

²⁵⁴ See **Exhibit 106** at 3–4 (2018 map); **Exhibit 105** at 2 (2020 map).

²⁵⁵ See SELC, Burning Trees for Power: The Truth About Woody Biomass, Energy & Wildlife 9 n.9 (Jan. 2018), <https://bit.ly/2zxsFbL> (**Exhibit 107**) (providing equation for converting tons of pellets produced into acres of forest cleared).

the ACP's impacts. Additionally, a sixth wood pellet plant has recently been proposed near the ACP route, which, if approved, would have the potential to produce an additional 35,761 MTPY,²⁵⁶ requiring an additional harvest of 654 acres of forest per year.²⁵⁷

So, too, is the Commission's assessment of the cumulative impacts of transportation projects on forest fragmentation, wildlife, and water quality out-of-date. In particular, the Complete 540 Project in North Carolina will affect some of the same protected species impacted by the ACP.²⁵⁸ The EIS also noted "several planned roadway projects that would intersect or be near the ACP," but did not consider their impacts because "the timeframe in which these projects would occur is unknown."²⁵⁹ To the extent such timeframes have been clarified since 2017, the Commission must now include those roadway projects in its consideration of cumulative impacts.

Finally, the Commission has never accounted for the cumulative effects of other non-jurisdictional natural gas projects in eastern North Carolina and Virginia announced after publication of the EIS. These projects include plans to transport swine biogas from swine

²⁵⁶ See N.C. Dep't of Env'tl. Quality, Notice for Public Meeting (Feb. 14, 2020), <https://bit.ly/2Mc6w1C> (**Exhibit 108**). The reference to 39,420 oven dried tons in the notice has been converted to MPTY above for consistency.

²⁵⁷ Although currently proposed to produce 35,761 MTPY, the publicly traded parent company of Active Energy Renewable Power recently announced to shareholders its intent for this facility to produce up to 400,000 tons of pellets per year. See *AEG Lumberton Manufacturing Hub*, Active Energy Group, <https://bit.ly/2M9QSXY> (last visited July 1, 2020) (**Exhibit 109**); Active Energy Group, *Transforming Low-Cost Biomass Into High-Value Efficient Fuel 10* (Apr. 2019), <https://bit.ly/3gAPtb1> (**Exhibit 110**). This would require harvesting 7,322 acres of forest per year. See SELC, *Burning Trees for Power* 9 n.9.

²⁵⁸ See FWS, *Biological Opinion for Complete 540, Triangle Expressway 18–22* (Oct. 15, 2019), <https://bit.ly/3erphOc> (**Exhibit 111**).

²⁵⁹ EIS App. W, tbl. W-1 at W-16.

farms to “existing natural gas distribution systems,” which could include the ACP²⁶⁰; the proposed Header Improvement Project²⁶¹; ongoing construction of the Robeson LNG facility²⁶²; and the Chickahominy Power Station and C4GT power station, which are two new, large gas power plants proposed in the same Air Quality Control Region as part of the ACP.²⁶³

C. The Commission Cannot Grant an Extension Absent Additional State Certifications Under Section 401 of the Clean Water Act.

Extending the construction deadline in the Certificate Order triggers Section 401(a)(1) of the Clean Water Act²⁶⁴ anew, requiring additional state Section 401 certifications that have not yet been obtained or waived. Section 401(a)(1) requires state certification for federal approvals “to conduct *any* activity ... which *may* result in *any* discharge in the navigable waters.”²⁶⁵ This expansive language includes Commission approval of construction beyond the original certificate deadline,²⁶⁶ which cannot occur

²⁶⁰ See Press Release, Smithfield Foods, Dominion Energy and Smithfield Foods Break Ground on Largest Renewable Natural Gas Project in North Carolina (Aug. 16, 2019), <https://bit.ly/3dj8KMk> (**Exhibit 112**).

²⁶¹ Header Improvement Project Application.

²⁶² Piedmont Natural Gas.

²⁶³ See Order, *Appl. of Chickahominy Power, LLC*, Case No. PUR-2017-00033, 2018 WL 2192722 (Va. SCC 2018); Order, *Appl. of C4GT, LLC*, Case No. PUE-2016-00104, 2017 WL 1830611 (Va. SCC 2017); see also Certificate Order ¶ 311 (defining geographic scope for climate change cumulative impacts as the Air Quality Control Region); EIS 4-592, tbl. 4.13-1 (same).

²⁶⁴ 33 U.S.C. § 1341(a)(1).

²⁶⁵ *Id.* (emphasis added); see also 40 C.F.R. § 121.1(a).

²⁶⁶ See *S.D. Warren Co. v. Maine Bd. of Envtl. Prot.*, 547 U.S. 370, 380 (Section 401’s “terms have a broad reach”); *Ala. Rivers All. v. FERC*, 325 F.3d 290, 292 (D.C. Cir. 2003) (requiring Section 401 certification for hydroelectric dam license amendment because increase in volume of water passing through dam’s turbines “may result in any discharge”); *FPL Energy Marine Hydro LLC*, 111 FERC ¶ 61,104, at ¶ 25 (2005) (“[A]ny pre-existing discharge will not be allowed to continue in the future unless a new license is obtained. In

absent an extension.²⁶⁷ The existing Section 401 certifications issued by West Virginia, Virginia, and North Carolina do not address potential discharge activity beyond the Certificate Order’s original deadline.²⁶⁸ And there is reason to believe that construction during the period for which an extension is sought will present greater water quality risks than originally contemplated. In addition to the additional impacts to water quality set forth in Section III.B.2.b, *supra*, an extension would allow Atlantic to shoehorn the Certificate Order’s original three-year construction period into a two-year window—potentially increasing the rate and intensity of discharges associated with construction.²⁶⁹

The Commission’s practice of issuing conditional certificates does not eliminate the need for additional Section 401 certifications supporting the requested extension—unless the extension is conditioned upon receipt of additional Section 401 certifications.²⁷⁰

this sense, relicensing is an activity that may result in a discharge because, without a new license, the discharge will not be authorized to continue.”).

²⁶⁷ See, e.g., *Iroquois Gas Transmission Sys., L.P.*, 104 FERC ¶ 61,307, at ¶ 14 (2003) (“If the application fails to construct the authorized facilities by the construction deadline, the certificate will lapse. However, ... construction deadlines may be extended for good cause”); cf. *Cal. Trout v. FERC*, 313 F.3d 1131, 1136 (9th Cir. 2002) (finding no Section 401 certification required where, unlike certificate extension, Commission’s issuance of annual license for hydroelectric project was “non-discretionary act” compelled by statute).

²⁶⁸ See *FPL Energy*, 111 FERC ¶ 61,104, at ¶ 25 (requiring Section 401 certification even in the face of “pre-existing discharge”).

²⁶⁹ See *Ala. Rivers All.*, 325 F.3d at 300 (recognizing that increased rate of discharge triggers Section 401, even if total volume of discharge over given period remains constant).

²⁷⁰ Cf. *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 399 (D.C. Cir. 2017) (approving conditional certificate order that did not authorize any potential discharge activity until requisite Section 401 certification was obtained); *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at ¶ 19 (“The Commission’s conditional certificate orders do not authorize any activity that could result in a discharge to New York waters. This is true for the Certificate Order including extensions of time.”) (footnote omitted).

D. An Extension Is Not Warranted Where Landowners' Use and Development of Land Is Restricted and Atlantic Has Failed to Demonstrate Credible Prospects for Completion of the ACP.

Rockfish Valley Investments, LLC (“RVI”) is a family-owned limited liability corporation that was developing a 100-acre parcel of land in the heart of Nelson County, Virginia, when the ACP was proposed. The Averitt family purchased the parcel and established the company in 2013 to maximize on the budding tourism economy in Nelson County by providing a world-class boutique resort, market, and event venue: the Spruce Creek Resort and Market. RVI invested significant resources in developing a project that would bring at least 125 permanent jobs to the rural economy and generate tens of millions of dollars for the local economy. RVI applied for and obtained special-use permits before Atlantic settled on and was granted permission to use the currently proposed pipeline route. Despite several conversations and meetings between RVI, the Averitts, and Atlantic’s representatives, Atlantic pushed for—and the Commission granted—a final pipeline route that cuts through the very center of the 100-acre parcel that would have become Spruce Creek Resort and Market. The final route requires the removal of over 1,000 mature trees and irreparably damages the natural beauty and contour of the landscape for this project. Atlantic’s route also eliminates RVI’s ability to build its treehouse-style cabins, which made up roughly one-third of the total planned units, as Atlantic’s easement would bar RVI from making improvements in the right-of-way.

It has now been more than four years since Atlantic settled on its pipeline route, devastating RVI's property and development project. During this time, the tourism economy in Nelson has continued to boom, and many competing projects have been announced or built. A local brewery and local cidery, both located within two miles of RVI's property,

have blossomed and been sold to national interests for more than \$50 million and \$100 million, respectively. But during these four years, RVI and the Averitt family have been held in limbo, unable to develop their property because Atlantic has argued in related cases that eminent domain law prohibits any claim for remainder damages to property that is developed after the owner is made aware of a proposed pipeline project.²⁷¹ Given that legal threat, RVI risks being unable to receive compensation for any changes made to the property as long as the pipeline project is pending. For over four years now, RVI and the Averitts have been forced to carry the cost of their investment while not being able to proceed with any development projects.

As the developer and landowners forced to carry the burden of the proposed ACP for over four years already, RVI and the Averitt family object to Atlantic's request for an extension. Granting such an extension would force RVI and the Averitts to continue carrying the burden of this ill-conceived project while it attempts to find a path to construction—an unlikely scenario. The project lacks eight key permits,²⁷² its route remains uncertain,²⁷³ and Atlantic has completed only a few miles of its massive 600-mile project.²⁷⁴ Aside from blanket statements that it expects “prompt reissuance” of its missing permits with no change to the route,²⁷⁵ Atlantic has failed to “demonstrate [any] credible prospect for its project’s

²⁷¹ See Pl.’s Br. in Supp. of Mot. for Partial Summ. J. at 6, *Atl. Coast Pipeline, LLC v. 4.93 Acres*, No. 3:18-cv-00079-NKM-JCH (June 4, 2020) (W.D. Va.) (arguing that when landowner makes purchases with notice of intended taking, landowner cannot claim severance damages).

²⁷² See *supra* note 5.

²⁷³ See, e.g., *Cowpasture*, 911 F.3d at 167–73 (finding that NFMA, Forest Plans, and NEPA require Forest Service to consider alternative pipeline routes).

²⁷⁴ See Weber, *supra* note 7.

²⁷⁵ Extension Request at 3.

completion”²⁷⁶ in light of the significant uncertainty surrounding the project’s future. Indeed, as noted in Section III.B.1.d, earlier this year—after receiving *two* extensions²⁷⁷—developers abandoned the Constitution Pipeline, but only after holding landowners in limbo for six years and causing unnecessary destruction to properties along the abandoned route.²⁷⁸

To ask RVI to bear the economic and strategic burden of, at minimum, two additional years in limbo is asking far too much from a business that has spent large amounts of money and four years already seeking to preserve its constitutional property rights. Landowners have a right to develop their property in ways that serve and support their community and generate income for their families and a return on their investment. The Commission cannot expect a small business to carry the costs of Atlantic’s ill-conceived route and stubborn refusal to heed the concerns of expert agencies any longer. Accordingly, RVI and the Averitt family ask the Commission to deny Atlantic’s request and, in doing so, help restore the balance between Atlantic’s desire to build a pipeline and the rights of individuals and families to develop and use their property.

IV. CONCLUSION

For these reasons, the Commission must deny Atlantic’s request for a two-year extension of time to construct the ACP and place it into service.

²⁷⁶ See *Arlington Storage*, 155 FERC ¶ 61,165, at ¶ 10 (recognizing that “an extension of time which results in limitations in the use of a landowner’s property might not be warranted unless the company can demonstrate credible prospects for its project’s completion.”).

²⁷⁷ *Constitution Pipeline Co.*, 157 FERC ¶ 61,145, at ¶¶ 11-13 (rejecting argument that Constitution Pipeline failed to “demonstrate credible prospects for its project’s completion” and denying rehearing of letter order granting first two-year extension); *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at ¶¶ 11-12, 16 (again rejecting argument that Constitution Pipeline failed to “demonstrate credible prospects for its project’s completion” and granting second two-year extension).

²⁷⁸ Esch *supra* note 135; Hurdle, *supra* note 134.

Respectfully submitted,

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Dated: July 2, 2020

**EXHIBITS TO COMMENTS IN OPPOSITION
TO REQUEST FOR EXTENSION OF TIME**

- Exhibit 1 Letter from Angela M. Woodard, DETI, to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Nov. 21, 2018) (eLibrary No. 20181121-5094)
- Exhibit 2 Letter from Matthew R. Bley, DETI, to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Dec. 11, 2018) (eLibrary No. 20181211-5109)
- Exhibit 3 Letter from Richard W. Foley, FERC, to Sean P. Jamieson, Spire STL Pipeline, LLC, Dkt. No. CP 17-40 (June 18, 2020) (eLibrary No. 20200618-3095)
- Exhibit 4 U.S. Forest Serv., Scoping Comments, Dkt. No. PF15-6 (Apr. 27, 2015) (eLibrary No. 20150428-5052)
- Exhibit 5 U.S. Forest Serv., Comments on Draft Resource Reports, Dkt. No. PF15-6 (July 30, 2015) (eLibrary No. 20150730-5223)
- Exhibit 6 Letter from H. Thomas Speaks Jr., U.S. Forest Serv., to Kimberly D. Bose, FERC, Dkt. No. PF15-6 (Sept. 17, 2015) (eLibrary No. 20150917-5134)
- Exhibit 7 Letter from H. Thomas Speaks Jr., U.S. Forest Serv., to Kimberly D. Bose, FERC, Dkt. No. CP15-554 (Oct. 13, 2015) (eLibrary No. 20151013-5528)
- Exhibit 8 Letter from Kathleen Atkinson, U.S. Forest Serv., to Leslie Hartz, ACP, Dkt. No. CP15-554 (Jan. 19, 2016) (eLibrary No. 20160121-5029)
- Exhibit 9 U.S. Forest Serv., Comments on the Draft EIS for Proposed ACP Project, Dkt. No. CP15-554 (Apr. 6, 2017) (eLibrary No. 20170406-5532)
- Exhibit 10 U.S. Forest Serv., Comments on the Preliminary Draft Biological Evaluation, Dkt. No. CP15-554 (Sept. 30, 2016) (eLibrary No. 20160930-5329)
- Exhibit 11 Submittal of Correspondence between Forest Service and ACP, Atlantic Coast Pipeline LLC, Dkt. No. CP15-554 (Mar. 14, 2017) (eLibrary No. 20170313-5332)
- Exhibit 12 Email from Clyde Thompson, U.S. Forest Serv., to Glenn Casamassa, U.S. Forest Serv. (Dec. 20, 2016)
- Exhibit 13 Email from Leslie Hartz, Dominion Transmission, Inc., to Clyde Thompson, U.S. Forest Serv. (Jan. 26, 2016)
- Exhibit 14 Email from Glenn Casamassa, U.S. Forest Serv., to Kathleen Atkinson, U.S. Forest Serv. (Dec. 27, 2016)

- Exhibit 15 Letter from John Schmidt, FWS, to William Scarpinato, Dominion Energy (Dec. 9, 2014)
- Exhibit 16 Letter from Patrick Hunter, SELC, to Paul Phifer, FWS, Dkt. Nos. CP15-554 et al. (Sept. 7, 2018) (eLibrary No. 20180911-5007)
- Exhibit 17 Email from Liz Stout, FWS, to Robert Anderson, FWS (Oct. 3, 2017)
- Exhibit 18 Letter from John E. Schmidt, FWS, to Kimberly D. Bose, FERC, Dkt. No. CP15-554 (Jan. 7, 2016) (eLibrary No. 20160107-5228)
- Exhibit 19 FWS, FERC & FWS Consultation Meeting, General Comments (Nov. 7, 2016)
- Exhibit 20 FWS, Comments on Atlantic Coast and Supply Header Pipeline Project Draft EIS, Dkt. No. CP15-554 (Mar. 30, 2017)
- Exhibit 21 James Cason official calendar,
https://www.doi.gov/sites/doi.gov/files/uploads/cason_april_1_-_28_2017_redacted.pdf
- Exhibit 22 Email from Glenn Smith, FWS, to Jerry Ziewitz et al., FWS (Apr. 14, 2017)
- Exhibit 23 Letter from Angela M. Woodard, ACP, to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Oct. 1, 2015) (eLibrary No. 20151001-5220) (only cover page and cited pages included due to length of document; full document available in Commission's eLibrary)
- Exhibit 24 Lakshmi Fjord, Mot. to Intervene, Dkt. No. CP15-554 (Oct. 21, 2015) (eLibrary No. 20151022-5031)
- Exhibit 25 Letter from Sonja Ingram, Pres. Va., to Kimberly D. Bose, FERC, Dkt. No. CP15-554 (May 31, 2016) (eLibrary No. 20160602-5451)
- Exhibit 26 Letter from Paul M. Wilson, Pastor, Union Hill Baptist Church, to Kimberly D. Bose, FERC, Dkt. No. CP15-554 (Apr. 4, 2017) (eLibrary No. 20170405-5078)
- Exhibit 27 Letter from Sonja Ingram, Justin Sarafin, Pres. Va., & Lakshmi Fjord, to John Eddins, Advisory Council on Historic Pres., Dkt. No. CP15-554 (Apr. 6, 2017) (eLibrary No. 20170406-5734)
- Exhibit 28 Shenandoah Valley Network et al., Comments on the Draft EIS 282-93, Dkt. No. CP15-554 (Apr. 6, 2017) (eLibrary No. 20170406-5347) (only cover page and cited pages included due to length of document; full document available in Commission's eLibrary)

- Exhibit 29 Letter from Sharee Williamson, Nat'l Trust for Historic Pres., to Nathaniel J. Davis, FERC, Dkt. No. CP15-554 (Apr. 6, 2017) (eLibrary No. 20170406-5288)
- Exhibit 30 Letter from Emma Ernst, Pres. Piedmont, to Kimberly D. Bose, FERC, Dkt. No. CP15-554 (Apr. 5, 2017) (eLibrary No. 20170406-5086)
- Exhibit 31 Governor's Advisory Council on Env'tl. Justice, Memo to Governor Northam, Dkt. No. CP15-554 (Aug. 16, 2018) (eLibrary No. 20181026-4000)
- Exhibit 32 Letter from Rebecca Tomazin, CBF, to Robert Langford, Va. State Air Pollution Control Bd., et al., Ex. E (Sept. 21, 2018)
- Exhibit 33 Email from Jon Mueller, CBF, to Va. DEQ, Att. D (Jan. 4, 2019)
- Exhibit 34 Letter from Amanda B. Tornabene, Atlantic Coast Pipeline, to Va. DEQ, 1 (Jan. 2019)
- Exhibit 35 Letter from Amanda Tornabene, Atlantic Coast Pipeline, LLC, to Michael Dowd, Va. DEQ (Apr. 30, 2020)
- Exhibit 36 U.S. Energy Info. Admin., Annual Energy Outlook 2020, <https://bit.ly/3etFd2p> (last visited July 1, 2020)
- Exhibit 37 Direct Testimony of Gregory M. Lander, *In re Va. Elec. & Power Co.'s Integrated Resource Plan filing*, Case No. PUR-2018-00065 (Va. SCC Aug. 10, 2018), <https://bit.ly/3ipFqGT>
- Exhibit 38 Atlantic Coast Pipeline Project Appl., Dkt. No. CP15-554-000 (Sept. 18, 2015) (eLibrary No. 20150918-5212)
- Exhibit 39 SELC, Dominion's Electricity Peak Load Forecasts vs. Actual Peak Loads (July 1, 2020)
- Exhibit 40 Direct Testimony of James F. Wilson, *Va. Elec. & Power Co.'s Integrated Res. Plan filing*, Case No. PUR-2018-00065 (Va. SCC Aug. 10, 2018), <https://bit.ly/2NNF3aK>
- Exhibit 41 Integrated Resource Plan, *In re: Va. Elec. & Power Co.'s Integrated Res. Plan filing*, Case No. PUR-2020-000352 (Va. SCC May 1, 2020), <https://bit.ly/2NJhMab>
- Exhibit 42 Synapse Energy Economics, Obsolete Atlantic Coast Pipeline Has Nothing to Deliver (2020)
- Exhibit 43 Va. Elec. & Power Co.'s Mot. for Relief from Certain Requirements, *In re Va. Elec. & Power Co.'s Integrated Res. Plan filing*, Case No. PUR-2020-00035 (Va. SCC Mar. 24, 2020), <https://bit.ly/2zDYxeD>

- Exhibit 44 Report of Staff Witness Bernadette Johnson, *Va. Elec. & Power Co.- To revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No PUR-2020-00031 (Va. SCC May 27, 2020), <https://bit.ly/2AIBqpD>
- Exhibit 45 Integrated Res. Plan, *In re: Va. Elec. & Power Co.'s Integrated Res. Plan filing*, Case No. PUE-2015-00035 (Va. SCC July 1, 2015), <https://bit.ly/3dO6ITO>
- Exhibit 46 Appl., *Va. Elec. & Power Co. - For approval/certification of proposed Greensville Co. Power Station*, Case No. PUE-2015-00075 (Va. SCC July 1, 2015), <https://bit.ly/3eRTJlg>
- Exhibit 47 Integrated Res. Plan, *In re: Va. Elec. & Power Co.'s Integrated Res. Plan*, Case No. PUR-2017-00051 (Va. SCC May 1, 2017), <https://bit.ly/2BrvHio>
- Exhibit 48 SkippingStone, *Analysis of the Sufficiency of Dominion Energy Virginia's Existing Pipeline Contracts to Meet Gas-Fired Generation Demand 1* (2020)
- Exhibit 49 Duke Energy Carolinas Integrated Res. Plan, Dkt. E-100, Sub 137 (NCUC Sept. 1, 2012), <https://bit.ly/2UHkK3b>
- Exhibit 50 Progress Energy Integrated Res. Plan, Dkt. E-100, Sub 137 (NCUC Sept. 4, 2012), <https://bit.ly/346RqpX>
- Exhibit 51 Duke Energy Carolinas Integrated Res. Plan Update Report, Dkt. E-100, Sub 157 (NCUC Oct. 29, 2019), <https://bit.ly/2yF2bEy>
- Exhibit 52 Duke Energy Progress Integrated Res. Plan Update Report, Dkt. E-100, Sub 157 (NCUC Oct. 29, 2019), <https://bit.ly/2RbaHRT>
- Exhibit 53 N.C. Dep't of Envtl. Quality, *Clean Energy Plan 11, 12* (Oct. 2019), <https://bit.ly/3evSnMC>
- Exhibit 54 Duke Energy, *Achieving a Net Zero Carbon Future* (2020), <https://bit.ly/38hLywd>
- Exhibit 55 Appl., *Appl. of Va. Nat. Gas for approval & certification of natural gas facilities: the Header Improvement Project*, Case No. PUR-2019-00207 (Va. SCC Dec. 6, 2019), <https://bit.ly/2XHC9sI>
- Exhibit 56 Appl. of Mountain Valley Pipeline, LLC at 2, 9, Dkt. No. CP19-14 (Nov. 6, 2018) (eLibrary No. 20181106-5159)
- Exhibit 57 Robeson Liquefied Natural Gas, Piedmont Nat. Gas, <https://bit.ly/3caQD9J> (last visited July 1, 2020)
- Exhibit 58 Natural Gas Data: Pipelines, U.S. Energy Info. Admin. (Jan. 22, 2020), <https://www.eia.gov/naturalgas/data.php>

- Exhibit 59 Letter from John A. Roscher, Columbia Gas Transmission, LLC, to Kimberly D. Bose, FERC, App. A, *Columbia Gas Transmission, LLC*, Dkt. No. RP18-1217 (Sept. 25, 2018) (eLibrary No. 20180925-5118)
- Exhibit 60 Letter from Matthew R. Bley, DETI, to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Aug. 13, 2018) (eLibrary No. 20180813-5065)
- Exhibit 61 Letter from Matthew R. Bley, DETI, to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Aug. 15, 2018) (eLibrary No. 20180815-5047)
- Exhibit 62 Transco Pet. for Reh'g, *In re: Joint Appl. & Pet. of S.C. Elec. & Gas Co. & Dominion Energy, Inc. for Review and Approval of a Proposed Business Combination*, Dkt. No. 2017-370-E (July 16, 2018)
- Exhibit 63 Comments of Dominion Energy, Inc., Dkt. No. PL18-1 (July 25, 2018) (eLibrary No. 20180725-5066)
- Exhibit 64 Dominion Energy, Quarterly Report (Form 10-Q) (May 5, 2020), <https://bit.ly/2AjGFpF> (only cover page and cited page included due to length of document; full report available at URL)
- Exhibit 65 Duke Energy, Quarterly Report (Form 10-Q) (May 12, 2020), <https://bit.ly/38h83RG> (only cover page and cited page included due to length of document; full report available at URL)
- Exhibit 66 *Feb. 24 Media Statement*, Constitution Pipeline (Feb. 24, 2020), <https://constitutionpipeline.com>
- Exhibit 67 Mot. to Suppl. Env'tl. Impact Statement by Alliance for the Shenandoah Valley et al., Dkt. Nos. CP15-554 et al. (May 30, 2020) (FERC eLibrary No. 20200601-5038)
- Exhibit 68 Email from Sumalee Hoskin, FWS, to Carol Croy, U.S. Forest Serv. (Aug. 29, 2018)
- Exhibit 69 FWS, Biological Opinion, Dkt. Nos. CP15-554 et al. (Sept. 11, 2018) (eLibrary No. 20180917-3001)
- Exhibit 70 FWS, Survey Protocols for the Rusty Patched Bumble Bee (Apr. 12, 2019), <https://bit.ly/2Ajffji>
- Exhibit 71 FWS, Rusty Patched Bumble Bee Species Status Assessment (June 2016), <https://bit.ly/2Ber2Ad>
- Exhibit 72 Letter from Patrick Hunter, SELC, to Paul Phifer, FWS, Dkt. Nos. CP15-554 et al. (Oct. 1, 2019) (eLibrary No. 20191018-5045)

- Exhibit 73 FWS, Special Status Assessment Report for the Candy Darter 39 (Mar. 2018), <https://bit.ly/3c8I9RD>
- Exhibit 74 Letter from Cindy Schulz, FWS, to Dr. James Martin, FERC (Apr. 27, 2020)
- Exhibit 75 U.S. Forest Serv., Greenbrier Southeast Project Draft Env'tl. Assessment (Apr. 2020), <https://bit.ly/2XetfEh>
- Exhibit 76 U.S. Forest Serv., Panther Ridge Wildlife Habitat Enhancement Project Env'tl. Assessment (Apr. 2019), <https://bit.ly/2AfFQhi>
- Exhibit 77 U.S. Forest Serv., E. Divide Insect & Disease Project Phase II Env'tl. Assessment (Dec. 2019), <https://bit.ly/3cdNnur>
- Exhibit 78 SELC, E. Divide Insect & Disease Phase II Comments (Feb. 26, 2020)
- Exhibit 79 FERC, Env'tl. Compliance Monitoring Reports, Dkt Nos. CP15-554 et al.
- Exhibit 80 Letter from Richard Gangel, Dominion Energy Servs., Inc., to Timothy J. Casto, W.Va. Dep't of Env'tl. Prot. (Aug. 22, 2018)
- Exhibit 81 Letter from Richard Gangel, Dominion Energy Servs., Inc., to Timothy J. Casto, W.Va. Dep't of Env'tl. Prot. (Aug. 27, 2018)
- Exhibit 82 W.V. Dep't of Env'tl. Prot., Notices of Violation on Atlantic Coast Pipeline project
- Exhibit 83 W.V. Dep't of Env'tl. Prot., Notices of Violation on Mountain Valley Pipeline project
- Exhibit 84 W.V. Dep't of Env'tl. Prot., Notices of Violation on Mountaineer Xpress project
- Exhibit 85 Letters from Richard Gangel & Spencer Trichell, Dominion Energy Servs., to Harold D. Ward, DEP (Apr. 17, 2019, Apr. 12, 2019, and Mar. 26, 2019)
- Exhibit 86 Letter from Indian Creek Watershed Bd. of Directors to Kimberly D. Bose, FERC, Dkt. No. CP16-10 (May 6, 2020) (eLibrary No. 20200507-5054)
- Exhibit 87 Letter from Matthew Eggerding, Mountain Valley Pipeline, LLC, to Kimberly D. Bose, FERC, Dkt. No. CP16-10 (Aug. 8, 2019) (eLibrary No. 20190808-5134)
- Exhibit 88 FERC, Env'tl. Compliance Monitoring Program, Weekly Summary Report, Dkt. No. 16-10 (Apr. 24, 2020) (eLibrary No. 20200424-4001)
- Exhibit 89 Supplemental Information – April 10 Variance Request at 26, Dkt. No. 16-357 (May 30, 2019) (eLibrary No. 20190530-5170)

- Exhibit 90 U.S. Global Change Research Program, Climate Change Impacts in the United States (May 2014), <https://go.aws/2TNLgXS> (only cover page included due to length of document; full report available at URL)
- Exhibit 91 U.S. Global Change Research Program, Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States (2018), <https://bit.ly/2Xa3BAg> (only cover page included due to length of document; full report available at URL)
- Exhibit 92 Int'l Panel on Climate Change, Global Warming of 1.5°C (2018), <https://bit.ly/3deWWdF> (only cover page included due to length of document; full report available at URL)
- Exhibit 93 Letter from Robert Burrough, PHMSA, to William F. Limpert (June 1, 2018)
- Exhibit 94 3M, Technical Brief: UV Protection of Coated Line Pipe (2014), <https://bit.ly/38du3Nw>
- Exhibit 95 3M, NAPCA Workshop: UV Protection of Line Coated Pipe (Aug. 20, 2009), <https://bit.ly/2VtAJ4X>
- Exhibit 96 Nat'l Ass'n of Pipe Coating Applicators, NAPCA Bulletin 12-78-04: External Application Procedures for Plant Applied Fusion Bonded Epoxy (FBE) Coatings and Abrasion Resistant Overlay (ARO) Coatings to Steel Pipe, <http://www.napca.com/pdf/Bulletin-12-78-04.pdf>
- Exhibit 97 Letter from Madeline M. Van Nostrand, PHSMA, to Julie Reynolds-Engel, SELC, Attachs. (June 13, 2019)
- Exhibit 98 Letter from Colin J. Walthall, DETI, to Kimberly D. Bose, FERC, Dkt. No. CP15-555 (Apr. 18, 2019) (eLibrary No. 20190418-5092)
- Exhibit 99 Letter from Colin J. Walthall, DETI, to Kimberly D. Bose, FERC & Attach. 2, Dkt. No. CP15-555 (Apr. 24, 2019) (eLibrary No. 20190424-5136)
- Exhibit 100 Letter from Dave Swearingen, FERC, to Matthew Bley, DETI, Dkt. Nos. CP15-554 et al. (July 3, 2019) (eLibrary No. 20190703-3011)
- Exhibit 101 Letter from David Swearingen, FERC, to Matthew Bley, DETI, Dkt. Nos. CP15-554 et al. (June 30, 2020) (eLibrary No. 20200630-3033)
- Exhibit 102 Dominion Energy, Q4 2019 Earnings Call 24 (Feb. 11, 2020), <https://bit.ly/2zcrePF>
- Exhibit 103 U.S. Forest Serv., George Washington and Jefferson National Forest Current and Past Schedule of Proposed Actions, <https://bit.ly/2MbJc7M>

- Exhibit 104 U.S. Forest Serv., Monongahela National Forest Current and Past Schedule of Proposed Actions, <https://bit.ly/3ccZt6P>
- Exhibit 105 Map of Southeast U.S. Wood Pellet Plants in 2020
- Exhibit 106 Map of Southeast U.S. Wood Pellet Plants in 2018
- Exhibit 107 SELC, Burning Trees for Power: The Truth About Woody Biomass, Energy & Wildlife (Jan. 2018), <https://bit.ly/2zxsFbL>
- Exhibit 108 N.C. Dep't of Env'tl. Quality, Notice for Public Meeting (Feb. 14, 2020), <https://bit.ly/2Mc6w1C>
- Exhibit 109 *AEG Lumberton Manufacturing Hub*, Active Energy Group, <https://bit.ly/2M9QSXY>
- Exhibit 110 Active Energy Group, Transforming Low-Cost Biomass Into High-Value Efficient Fuel (Apr. 2019), <https://bit.ly/3gAPt1>
- Exhibit 111 FWS, Biological Opinion for Complete 540, Triangle Expressway (Oct. 15, 2019), <https://bit.ly/3erphOc>
- Exhibit 112 Press Release, Smithfield Foods, Dominion Energy and Smithfield Foods Break Ground on Largest Renewable Natural Gas Project in North Carolina (Aug. 16, 2019), <https://bit.ly/3dj8KMk>

CERTIFICATE OF SERVICE

I hereby certify that I have on July 2, 2020, caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Gregory Buppert _____

Gregory Buppert

SOUTHERN ENVIRONMENTAL LAW CENTER